

MEETING
STATE OF CALIFORNIA
THE RESOURCES AGENCY
CENTRAL VALLEY FLOOD PROTECTION BOARD

RESOURCES BUILDING
1416 9th STREET
AUDITORIUM
SACRAMENTO, CA

FRIDAY, JANUARY 16, 2009
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Mr. Benjamin Carter, President

Mr. Francis "Butch" Hodgkins, Vice-President

Ms. Maureen "Lady Bug" Doherty, Secretary

Ms. Teri Rie, Member

Mr. John W. Brown, Member

Ms. Emma Suarez, Member

STAFF

Mr. Jay Punia, Executive Officer

Ms. Virginia Cahill, Legal Counsel

Mr. Dan Fua, Supervising Engineer

Mr. Gary Hester, Chief Engineer

Mr. Eric Butler, Senior Engineer

Ms. Jill Phinney, Support Staff

DEPARTMENT OF WATER RESOURCES

Mr. Jon Yego, Senior Engineer

Ms. Nancy Finch, Legal Counsel

Mr. George Qualley, Chief, Division of Flood Management

Mr. Dave Wheeldon, Levee Repairs Branch, Sacramento
River Bank Protection Project Manager

Mr. Mike Inamine, Chief, Levee Repairs and Floodplain
Management Office

APPEARANCES continued

Mr. Pal Sandhu, Branch Chief, Levee Repairs Branch

Mr. Paul Farris, Branch Chief, Real Estate

Mr. Kip Young, Environmental Scientist, Levee Repairs
Branch

Mr. Ward Tabor, Assistant Chief Counsel

Mr. Chris Scobba

Mr. Eric Koch, Chief, Division of Flood Management

ALSO PRESENT

Mr. Paul Brunner, Three Rivers Levee Improvement
Authority

Mr. Jim Sander, US Army Corps of Engineers

Mr. Daniel Ruiz, Meridian Farms Water Company

Mr. Coren Wong, on behalf of John and Cathy Klein

Mr. Scott Shapiro

Mr. Mike Dietl, US Army Corps of Engineers, Project
Manager, Sacramento District

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1 P R O C E E D I N G S

2 --o0o--

3 PRESIDENT CARTER: Good morning, ladies and
4 gentlemen. Welcome to the Central Valley Flood
5 Protection Board meeting for January 16th. Call the
6 meeting to order.

7 Mr. Punia, would you please call the roll?

8 EXECUTIVE OFFICER PUNIA: Good morning. Jay
9 Punia, Executive Officer, Central Valley Flood
10 Protection Board.

11 Except Board Member Teri Rie, the rest of the
12 Board Members are present.

13 PRESIDENT CARTER: Thank you.

14 At this time, we'll entertain a motion to
15 approve the minutes from September 2008 tour and
16 November 21, 2008 tour.

17 I have one suggested change to the
18 September 18th tour list of attendees, if we could add
19 my name to that. I was present. That's the only
20 change I have.

21 Are there any other suggested changes to the
22 minutes? If not, we'll entertain a motion to approve.

23 SECRETARY DOHERTY: I'll make a motion we
24 approve the minutes as presented, and with the change
25 of adding President Carter's name on the tour.

1 PRESIDENT CARTER: Is there a second?

2 BOARD MEMBER SUAREZ: Second.

3 PRESIDENT CARTER: We have a second. Any
4 further discussion? All those in favor indicate by
5 saying aye.

6 BOARD MEMBER BROWN: I was absent.

7 PRESIDENT CARTER: And so you are abstaining?

8 BOARD MEMBER BROWN: Yes.

9 PRESIDENT CARTER: The September 19th meeting?

10 BOARD MEMBER BROWN: I'll abstain, Mr.

11 President. I was absent at the September 19th tour.

12 PRESIDENT CARTER: Okay. The motion before us
13 is to approve the September 18th tour minutes as well
14 as the November 21st minutes of the Board meeting.
15 Okay.

16 So Mr. Punia, would you call the roll on the
17 motion?

18 SECRETARY DOHERTY: Is this for both of these?

19 PRESIDENT CARTER: My understanding, that was
20 your motion.

21 SECRETARY DOHERTY: Fine.

22 PRESIDENT CARTER: And that was the second?

23 BOARD MEMBER SUAREZ: Correct.

24 EXECUTIVE OFFICER PUNIA: Board Member Emma
25 Suarez?

1 BOARD MEMBER SUAREZ: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member Butch
3 Hodgkins?

4 VICE-PRESIDENT HODGKINS: Aye.

5 EXECUTIVE OFFICER PUNIA: Board Member John
6 Brown?

7 BOARD MEMBER BROWN: I'll abstain.

8 EXECUTIVE OFFICER PUNIA: Board Member Lady
9 Bug?

10 SECRETARY DOHERTY: Aye.

11 PRESIDENT CARTER: Aye. So the motion
12 carries. Four ayes, one abstention.

13 At this point, we'll move on to Approval of
14 the Agenda for today. Are there any suggested changes
15 to the published agenda? Mr. Punia?

16 EXECUTIVE OFFICER PUNIA: Jay Punia. Consent
17 items -- Item 7, Consent Calendar. There are 7A
18 through 7F permit application on the Consent Calendar.

19 We were promised by US Army Corps of Engineers
20 that we will have the letters on all of these permit
21 applications. We had a lengthy discussion with the US
22 Army Corps of Engineers. Originally we were proposing
23 to put a lot more applications on the permit -- on the
24 schedule. But they concluded they can provide the
25 letters only for those six applications.

1 But unfortunately, we haven't received any of
2 these letters from the US Army Corps of Engineers, so
3 we don't have all the evidence to present -- to be part
4 of this Consent Calendar. So staff is recommending
5 that we remove this item from the agenda.

6 BOARD MEMBER SUAREZ: Which item?

7 PRESIDENT CARTER: Staff is recommending that
8 the five consent items -- I'm sorry -- six consent
9 items under Item 7 on the Consent Calendar be removed,
10 be pulled and postponed to a future meeting due to lack
11 of receipt of the Corps letter weighing in on each of
12 those projects.

13 Question: Does staff have any indication,
14 verbal or otherwise, whether or not there's opposition
15 from the Corps on these projects or any indication of
16 their support of these projects?

17 EXECUTIVE OFFICER PUNIA: I'm not aware of any
18 concerns by the US Army Corps of Engineers. I will let
19 Gary elaborate on this.

20 CHIEF ENGINEER HESTER: Gary Hester. I have
21 no indication that they oppose the projects. I believe
22 they are still completing their review and signing the
23 letters of approval.

24 PRESIDENT CARTER: Okay. Is there any member
25 of the Corps present today that can give us an

1 indication of where these projects stand?

2 EXECUTIVE OFFICER PUNIA: I have requested Jim
3 Sander yesterday to be here. I think he may be running
4 late. I'm assuming he will be here a little later.

5 PRESIDENT CARTER: Okay. Any other questions
6 with regard to the recommendation?

7 SECRETARY DOHERTY: So it's a staff
8 recommendation that we not go through this Consent
9 Calendar at the present time because we don't have
10 letters from the Corps?

11 EXECUTIVE OFFICER PUNIA: That's correct.

12 SECRETARY DOHERTY: I move we approve the
13 agenda with --

14 PRESIDENT CARTER: Before you do that Lady
15 Bug, are there any other suggested changes?

16 EXECUTIVE OFFICER PUNIA: No.

17 SECRETARY DOHERTY: Removing items A through F
18 on the Consent Calendar.

19 PRESIDENT CARTER: Okay. Is there a second
20 for that motion?

21 BOARD MEMBER BROWN: I'll second that,
22 Mr. Chairman.

23 PRESIDENT CARTER: Okay. Any discussion?

24 BOARD MEMBER SUAREZ: Mr. Chairman, I have a
25 quick question for staff.

1 The applicants, have they been notified these
2 items were not going to be heard today?

3 EXECUTIVE OFFICER PUNIA: No, we haven't
4 notified the applicants. We were hoping until late
5 evening yesterday that we will receive the letters and
6 keep these items on the agenda.

7 But my last conversation with Jim Sander
8 around 4:30 or 5:00, he was saying that the letters
9 were prepared; but they are not signed, so we won't
10 receive the letters.

11 BOARD MEMBER SUAREZ: Mr. President, could I
12 ask, if there's any member in the public that is an
13 applicant, maybe an opportunity to hear them?

14 PRESIDENT CARTER: Yes. Are there any members
15 of the public that came to hear the Board's decision on
16 the Consent Calendar today? None today.

17 BOARD MEMBER SUAREZ: Thank you.

18 PRESIDENT CARTER: I -- just one comment. I
19 realize and -- I respect staff's recommendation on
20 this, and I realize their concerns.

21 I believe, based on recent conversations we
22 had with the colonel and his staff this week that these
23 letters of support are in the process of being signed,
24 or reviewed and signed, within the Corps which to me
25 indicates Corps' support of or concurrence on the

1 projects, even though we don't have them in hand.

2 It does not seem unreasonable to me to -- for
3 the Board to potentially approve the Consent Calendar
4 subject to and delegate to the General Manager to sign
5 the permits once he has received letters from the Corps
6 on each of these that are in support of the permits.

7 So in this case, I think we have every
8 indication that the letters are in the mail and no
9 indication of lack of support. So I, for one, might
10 be -- I would be comfortable going ahead with the
11 Consent Calendar at this point, if it pleases the
12 Board.

13 SECRETARY DOHERTY: I could withdraw that
14 motion, but I have a question.

15 These are all, as I understand it,
16 after-the-fact requests, what's done before the permit
17 application. And if it already exists, why authorize
18 it? Is this going to be a continuing pattern that we
19 have?

20 PRESIDENT CARTER: I guess there is a
21 question. Are these permits that are basically
22 authorizing projects that have already been completed?

23 EXECUTIVE OFFICER PUNIA: I'll ask staff to
24 address this, Gary or John.

25 CHIEF ENGINEER HESTER: Three are existing.

1 The -- even in an existing encroachment, should go
2 through this process and have a valid encroachment
3 permit for it.

4 So I understand the -- your question is that
5 this is not the preferred way of doing it, but we
6 really should for any, you know, existing encroachment
7 go through this process.

8 And you're absolutely right. We should make
9 sure that applicants file permit application before
10 construction.

11 SECRETARY DOHERTY: Is there a process whereby
12 we can fine these people for building before asking?

13 I mean, it just sets a pattern. I'm going to
14 go out, and I'm going to buy a lot next week, and I'm
15 going to put out there whatever I want, and then I'm
16 going to come after you scold me and say oh, gee, here.
17 Here's my application.

18 CHIEF ENGINEER HESTER: Any unauthorized
19 encroachment that is not compliant with Title 23, we do
20 have enforcement mechanisms that we can pursue. In
21 this case, they are compliant, and we believe the Corps
22 has no objection to them. But they are consistent with
23 other similar encroachments.

24 SECRETARY DOHERTY: But my question is: Can
25 these people be fined?

1 CHIEF ENGINEER HESTER: I do not believe we
2 have a mechanism for imposing fines on them at this
3 point. I think that would require new legislation.

4 SECRETARY DOHERTY: Okay. Thank you. I can
5 withdraw my motion.

6 BOARD MEMBER BROWN: Same with my second,
7 Mr. Chairman. And I'll make another motion to leave
8 these on the Consent Calendar pending authorization for
9 the Executive Officer to sign it once the Corps has
10 submitted their approval.

11 SECRETARY DOHERTY: And I will second that.

12 PRESIDENT CARTER: Okay. So we have a motion
13 and second to approve the agenda as published and sent
14 out in the Board packet at this point.

15 Is there any discussion on that motion?

16 Mr. Yego?

17 CHIEF YEGO: Jon Yego, Senior Engineer, Water
18 Resources.

19 Basically, without the Corps letter, we
20 don't -- or we're not aware if there's any additional
21 conditions that we want to be applied to the permit.
22 And so I would be very careful about if we have to
23 bring it back to the Board if there is conditions that
24 need to be reviewed by the Board members.

25 BOARD MEMBER BROWN: Let's withdraw that

1 motion. Just leave it on the agenda for the time
2 being, Mr. Chairman, and we'll address that issue when
3 we get to this item then.

4 PRESIDENT CARTER: Very good.

5 So the -- your motion, though, was to approve
6 the minutes as published.

7 SECRETARY DOHERTY: That was the minutes.
8 This is the Consent Calendar.

9 PRESIDENT CARTER: I'm sorry; approve the
10 agenda as published.

11 BOARD MEMBER BROWN: Yes, sir.

12 PRESIDENT CARTER: Okay. And that was your
13 second?

14 SECRETARY DOHERTY: Yes.

15 PRESIDENT CARTER: Okay. Any further
16 discussion on that item?

17 (No response)

18 PRESIDENT CARTER: Okay.

19 Mr. Punia, would you call the roll?

20 EXECUTIVE OFFICER PUNIA: Board Member John
21 Brown?

22 BOARD MEMBER BROWN: Aye.

23 EXECUTIVE OFFICER PUNIA: Board Member Lady
24 Bug?

25 SECRETARY DOHERTY: Aye.

1 EXECUTIVE OFFICER PUNIA: Board Member Emma
2 Suarez?

3 BOARD MEMBER SUAREZ: Aye.

4 EXECUTIVE OFFICER PUNIA: Board Member Butch
5 Hodgkins?

6 VICE-PRESIDENT HODGKINS: Aye.

7 EXECUTIVE OFFICER PUNIA: Board President Ben
8 Carter?

9 PRESIDENT CARTER: Aye. Okay. So we'll go
10 with the agenda as published.

11 Item 4, Public Comments. This is the time
12 when the Board invites members of the public to come
13 before the Board and address the Board on unagendaized
14 items for today. We do ask that the public limit their
15 comments to five minutes.

16 And if you would, please, whether it's on
17 unagendaized items for this public comment or on items
18 that are agendaized for today, if you would please fill
19 out the sheets that are available at the back of the
20 auditorium or here at the front from Jill Phinney, then
21 we will know to recognize you when that item comes up
22 on the agenda.

23 So I don't have any public comment cards at
24 this time. Are there any members of the public that
25 wish to address the Board on unagendaized items?

1 (No response)

2 PRESIDENT CARTER: Okay. No public comment.

3 All right.

4 We'll move on to Item 5, Report of the
5 Activities of the Department of Water Resources. Good
6 morning, Mr. Qualley. Welcome.

7 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
8 Good morning, President Carter, Members of the Board.
9 I'll start off with the water conditions.

10 I am not as enthusiastic today as I was at the
11 December meeting. At that meeting, if you recall, it
12 looked like we had a pretty good storm coming in; but
13 as often happens, it fizzled.

14 But we need to be mindful that sometimes they
15 go the opposite direction, so we always have to be on
16 the alert. But that storm did in fact fizzle, so we
17 are in a situation that is -- it is getting worse.

18 As Maury Roos, who has been in this business
19 for over fifty years, reminds us, there still is about
20 two-thirds of the season left so we shouldn't give
21 hope -- give up hope. But it's not looking good at the
22 moment with the lovely weather that we're all enjoying.
23 And I know myself, I would much prefer it was raining
24 cats and dogs out there today.

25 We -- the current situation is that our precip

1 is about 90 percent of average to date at the end of
2 the year. Runoff, 40 percent of average. And
3 reservoir storage, 70 percent of average. And the snow
4 pack is at about three-quarters of its average value
5 for the date.

6 And we have started out very dry, as you know,
7 in January. We did, you know, start -- had a decent
8 start in December, but we need several good storms
9 between now and the end of the flood season. I'd like
10 to see about, you know, at least four decent events.

11 It works out really well if we get them about
12 every two weeks; and if we could define the perfect
13 season, we'd like to see a, you know, a pretty good
14 sized event about every two weeks or so.

15 That gives a chance for -- and we like them
16 cold, of course, as long as we're adding to our wish
17 list here. That way, the water can come in. The
18 reservoirs can contain the flows. We can increase the
19 snow pack and get ready for the next round.

20 So we'll see what the rest of the winter
21 brings us.

22 Moving on, Local Agency Annual Report for
23 2008. Jeremy Arrich briefed the Board on that report
24 last month, and we are in reproduction right now on the
25 report, and we should be putting hard copies of the

1 report in the hands of the Board Members by the end of
2 this month, and it will also be available on the
3 website.

4 Floodplain Management Branch has been busy
5 during December. Their Flood Risk Notification Program
6 staff conducted two workshops, one for the upper and
7 lower Sacramento basins and another one for the lower
8 San Joaquin basin, to discuss their levee flood
9 protection zone maps with local experts.

10 There was a lot of spirited conversation in
11 some of those meetings. In fact, DWR has scheduled
12 some follow-up workshops. They have one scheduled for
13 January 28th to respond to comments received from the
14 experts that were at the lower San Joaquin basin
15 meeting. And on January 8th, we had a workshop for the
16 upper San Joaquin basin.

17 Bottom line is we do plan to address the
18 comments and revise maps as necessary by the end of
19 February and then have a series of public workshops
20 to -- or refine the maps and present them to your Board
21 in March of 2009 and make them public through the
22 website.

23 In these maps, you know, they are considered
24 to be living documents, and as, you know, additional
25 information becomes available and it's appropriate to

1 make revisions to them, we certainly will keep doing
2 that because we want them to represent the levee flood
3 protection zone as accurately as possible.

4 But there is a lot of levees out there, a lot
5 of territories -- a lot of territory to cover, a lot of
6 data. So it will take time to get everything sorted
7 out.

8 California Water Plan Update. There is a
9 draft of the update 2009 now available, the public
10 draft. This one is different from the one in 2005
11 because it puts a lot greater emphasis on flood
12 management and the concept of integrated flood
13 management.

14 This is a concept our director, Lester Snow,
15 has really been pushing since day one when we came into
16 the position of being our director. And he's -- you
17 know, him in concert with some really dedicated staff
18 members and legislation that's been passed, funding
19 from the bonds, we've really been able to move forward
20 as a department on promoting integrated flood
21 management.

22 One manifestation of that is his -- my new
23 boss, Mark Cowin, being Deputy Director over integrated
24 flood management which is over the water supply side as
25 well as the flood side. So, you know, both, you know,

1 from a policy level and institutionally and
2 organizationally, the department is really embracing
3 the integrated approach.

4 I've provided a one-page handout that I
5 believe you should have that gives a little bit more
6 information on the water plan, gives some, you know,
7 some dates when it will be -- some publication will be
8 coming out, some additional workshops.

9 So I would encourage the Board Members to, you
10 know, become familiar with the plan and become as
11 active in the process as your time allows.

12 Senate Bill 5, Building Code Project. We're
13 preparing for two public meetings later this month, one
14 in Sacramento on the 21st and in the mid valley,
15 probably in Modesto, on the 26th.

16 What the project team is doing right now, they
17 are revising the project's context within the FloodSAFE
18 initiative. And one thing they've done is identified a
19 number of threats.

20 In fact, they pasted them up on the wall the
21 other day, and it really covered the whole wall with a
22 whole variety of threats that are being faced that
23 potentially could be addressed by, you know, by
24 adjustments to the Building Code.

25 So they have done a lot of good technical

1 work. They've been in contact with people really from
2 all over the nation, and we have good consulting help
3 with a nationwide view.

4 And they've had three technical advisory
5 committee meetings so far with the fourth one coming up
6 on the 29th. And your supervising engineer, Dan Fua,
7 does serve as a member of that committee.

8 So they've made a lot of progress in a short
9 period of time. And we're -- we believe it's very
10 important for this to go through a public process.

11 The way the schedule works for the building
12 standards committee, they don't -- they only entertain
13 changes -- I'm not sure if it's once a year. But
14 anyway, June, I think, is when the due date would be
15 for the changes.

16 So this gives us time to go through this
17 public process and what we present them for them to
18 beginning acting on in July would be, you know, a lot
19 more thorough than if we had tried to rush the process
20 sooner.

21 And we provide a website here for -- for more
22 information on that project.

23 Flood Operations Branch. We've got several
24 pages on the activities of the Flood Ops Branch as is
25 appropriate at this time of year. I'll just skim

1 through some of the highlights I have noted.

2 At the end of the year, our Eureka flood
3 center had a little bit of activity, as it turned out.
4 It didn't quite get to the levels that were
5 anticipated, but it was a good exercise to get them,
6 you know, back working in concert with the local OES
7 and the local emergency management agencies and the
8 National Weather Service because the north coast
9 streams can react very quickly.

10 And we've got a saying, you know, that get a
11 heavy dew on the Smith River and you can get to warning
12 stage sometimes. But it does react very quickly, and
13 in fact got up to a hundred thousand cfs in a very
14 short order.

15 So the staff and the whole team reacted well,
16 and -- but as it turned out, there wasn't any damage or
17 any -- didn't actually get to flood stage.

18 Upper Jones Tract. We have been working in
19 concert with Delta Suisun Marsh Office staff there.
20 They are in the lead on this, working with RD 2039 and
21 other local entities to effect repairs on the 2004
22 repair site.

23 There has been, you know, seepage going
24 through the site really ever since the repair was put
25 in. That's just the result of the nature of the

1 repair. There was a lot of really big rock on the
2 lower end of the foundation that went in, and it's very
3 hard to seal that up very tightly.

4 So they're looking into some work that the RD
5 would move forward with to put some additional fines in
6 place and additional filter material to slow that
7 seepage way down.

8 And this will be done through the Delta
9 Special Projects Program. So, as I said, our staff is
10 working in concert with DSMO.

11 They did another -- they had an engineering
12 team with geotechnical engineers go back out there on
13 January 7th and -- because -- we had had a team out
14 there at the end of October, and we wanted to make sure
15 that, you know, conditions weren't changing.

16 Because one thing you don't want to have
17 happen is for the situation to start getting worse,
18 for, you know, for additional problems or evidence to
19 be developing at the site that it might be degrading.

20 And they confirmed that it was really the same
21 situation as it was before, that there was not any
22 additional slumping or cracking. So certainly it's a
23 situation that we all want to get fixed sooner rather
24 than later.

25 There is the environmental consultation

1 that -- it's a 90-day consultation period started just
2 about a month ago. And so, you know, staff of the
3 local agency and our Delta Suisun Marsh Office are
4 working together to, you know, get that consultation,
5 you know, completed to be able to define what the
6 mitigation would be associated with the repair so then
7 the work can go on.

8 It's pretty important to get that consultation
9 done and define that mitigation. Otherwise it's, you
10 know, you either pay me now or pay me later. And if
11 you move forward with the work without knowing what the
12 mitigation requirement is, it's almost like a blank
13 check. So it makes sense to get that sorted out.

14 Moving on to southern California. As you
15 know, we have statewide responsibilities for our flood
16 operations, and we have had a continuing activity from
17 the Inyo County mud debris flows that occurred last
18 summer.

19 And they're kind of in the final stages now
20 to -- there was a temporary diversion that was put in
21 place shortly after the mud flows happened, and now
22 they're getting down to the point to be able to restore
23 the, you know, the local system there to the way it was
24 before.

25 So mid December, they participated in a

1 discussion with the locals and with OES about removing
2 a temporary diversion. And it indicates here the
3 diversion will be removed January 5th. I didn't double
4 check to see if that actually was underway, but I
5 presume it will move forward as scheduled.

6 Yorba Linda. There was also -- in mid
7 December, we were asked to provide some technical
8 assistance because they had some mud flows starting
9 there. So we provided technical assistance on
10 repositioning k-rails, and the southern district staff
11 advised the locals on that work.

12 Had a number of pre-season meetings and -- all
13 around the state. The last one was on December 4th up
14 on the north coast.

15 And skipping down here to the Delta. I'm on
16 page 7 now. Delta Emergency Operations Plan Tabletop
17 Exercise. That was held on December 12th, and by all
18 accounts it was very successful and helpful to all the
19 participants.

20 We have completed all of our FOC training
21 sessions.

22 And our Local Emergency Preparedness and
23 Response Section kind of promoted a trip out to Folsom
24 Dam. We have got a lot of new staff that's come into
25 the division over the last one, two, three years.

1 So this was a good chance for the whole group
2 to go out there and actually look over the facilities,
3 go through the dam out at Folsom and, you know, both
4 for the old hands and for the new folks to, you know,
5 to see what happens out there.

6 Because when the high water comes up, it's
7 really important for them to have a good sense of
8 what's out there and have already established good
9 working relationships with the Bureau staff.

10 We have started the process of preparing the
11 Delta -- here's a mouthful -- Delta Multiagency
12 Integrated Flood Emergency Operations Plan. The Delta
13 MIFEOP.

14 But seriously, it's a very important process
15 to where we've got this just, you know, numerous
16 agencies engaged in various aspects in the Delta; and
17 you need to just pick any subject, and you've got all
18 kinds of, you know, stakeholders and participants.

19 So the idea here is to get local agencies, the
20 Corps, OES, and others, including the Department, of
21 course, in -- sponsored into a working group so that
22 everybody, you know, clearly understands what, you
23 know, agency's specific role is.

24 And another aspect of this process is to kind
25 of identify: Are there any gaps in response, you know.

1 Looking at all the different agencies and what they
2 would pick up on, are there some areas that, you know,
3 need more attention?

4 For an example, like on evacuations. That's,
5 you know, typically a local agency law enforcement
6 responsibility. But, you know, just making sure all
7 the line of communications are in place so that if
8 there is an event coming up that people who aren't as
9 mobile, that somebody, you know, feels a responsibility
10 to, you know, to make sure that all bases are covered.

11 So finding gaps like that, if they exist, are
12 important.

13 Flood System Analysis Section. This is the
14 second mention of the AB 156 report. I'll just use
15 that to, you know, to mention that, you know, different
16 groups within the Department of Water Resources and
17 within Division of Flood Management have certain
18 specific responsibilities, and they have the lead to
19 get certain things done.

20 But they don't do that alone, and this is just
21 an example of, you know, two different entities within
22 the division have responsibilities on this report, and
23 so they need to work together, you know, to produce
24 deliverables in a timely manner.

25 Decision Support Section. We're continuing --

1 this is really a continuous improvement process on our
2 web portal, and really all of our communications
3 functions, to have information available as accurate as
4 possible and as convenient as possible.

5 I would really recommend all of you, if you
6 haven't done it yet, you know, go on to the cdec
7 website every once in a while because we're -- we have
8 new information or maybe new ways to convey the
9 information coming up all the time.

10 In particular, I would commend to you the --
11 we've got two reports here, the state climatologist's
12 monthly climate summaries and the state meteorologist's
13 monthly weather summaries.

14 Obviously, some of the information in there is
15 a little bit techy, but the people who are responsible
16 for those really make an effort to try to write it in a
17 way that it can be understood by anybody that comes
18 into the website.

19 And in particular, the monthly weather
20 summaries, Elissa Lynn, she has a particular flair for
21 writing, and I really enjoy reading her updates as they
22 come out.

23 Modernization of the Flood Center IT Assets.
24 We have the capability to do webcasts of our weather
25 briefings when we're in, you know, high water season.

1 I just happened to think, I don't think I could tell
2 you the exact date when we started those things. It's
3 been going on for a while. But we have a number of
4 entities signed up. We listed a few of them here, just
5 so you have an idea.

6 And all of these entities and others who have
7 signed up for this can dial in and actually get the
8 same information through the web as if they were in the
9 flood center, and I think that's just a tremendous
10 advance.

11 I went to a weather briefing, oh, sometime in
12 December, and it was kind of interesting. They've
13 actually got a yellow line on the floor where the
14 person doing the presenting has to stand within that
15 spot to make sure they're in camera range of the Web X
16 camera; and then, of course, whatever is being
17 displayed on the screen is also being displayed for the
18 people hooked in through the Internet.

19 So it's a real good way to keep up to speed on
20 what's happening in our weather briefings.

21 I'll move on. On page 11, our Flood Project
22 Modifications and Permits Branch. All of our EIP
23 projects shut down in November for duration of the
24 flood season.

25 TRLIA kind of has a unique situation to where

1 they're, you know, they've got the work on the setback
2 levee. That's away from the water. So to the extent
3 they're able to do work throughout the winter, they're
4 going to try to do that.

5 But obviously, for economic reasons, you don't
6 want to, you know, start and stop and start and stop.
7 So they'll be doing work as they can to, you know, take
8 advantage if, God forbid, we have a run of dry weather
9 here. Might as well get some good out of it by getting
10 some construction work done.

11 I think we would all prefer that they stay
12 shut down until April because it's going to be too wet.
13 Paul might have a different view on that, but I'm
14 selfish on the water supply standpoint.

15 The final --

16 SECRETARY DOHERTY: On the TRLIA, the effluent
17 that is coming from the plant: What type of effluent
18 is that? On page 11, Three Rivers Levee Improvement
19 Authority, the second paragraph of that statement:

20 ... program staff are working with TRLIA
21 on a land acquisition that has
22 environmental implications. The
23 landowner is demanding that the effluent
24 from the processing plant on the land
25 side of the new levee to be allowed to

1 discharge in a designated area.

2 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

3 I'm not specifically familiar with that particular
4 thing. I could ask Eric or Paul to comment on that.

5 MR. BRUNNER: Paul Brunner, Executive Director
6 for Three Rivers.

7 The effluent is from their processing plant.
8 It's essentially the squashed pear juice.

9 SECRETARY DOHERTY: Thank you.

10 PRESIDENT CARTER: Okay.

11 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

12 Another issue that came up on TRLIA that's been
13 discussed in the past is the discovery of the human
14 remains which were determined to be of Native American
15 origin.

16 And there have been several meetings with the
17 tribal representatives on that to find a solution to
18 that. And as I understand it, those discussions are
19 ongoing. The Department also has representatives that
20 are participating in that process, and I would expect
21 Paul probably has some additional information on the
22 current status of that when he makes his report.

23 SAFCA. We're -- now that we have the EIP
24 guidelines finalized, we're working with SAFCA to get
25 all the necessary information together for our funding

1 agreement.

2 Because, if you recall, for our early
3 implementation for -- well, '08-09 and '09-10, we have
4 a component for solicited grants and another component
5 for capital outlay for projects that we knew were
6 underway and that we could have enough detail to
7 actually provide all the information Department of
8 Finance needs to be able to make a decision on that as
9 a capital outlay funding.

10 So SAFCA is one of the ones that had enough
11 information for that, so we are working on the funding
12 agreement with them for their ongoing work.

13 PRESIDENT CARTER: Mr. Qualley, with regard to
14 that and these EIP funds, the 193-odd million for
15 SAFCA, that is the funding that's on hold at this point
16 pending budget resolution?

17 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
18 That's correct.

19 PRESIDENT CARTER: Okay. So all of the new
20 funding on these public safety projects for the time
21 being is on hold?

22 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
23 Yeah. And we won't actually be able to execute the
24 funding agreement until the budget situation is
25 resolved so that we know the flow of bond funding will

1 be resuming.

2 PRESIDENT CARTER: Okay. Thank you.

3 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

4 RD 2103, the Wheatland/Bear River project. There was
5 some additional eligible costs that have come up in the
6 progress of that construction, so we are working on an
7 amendment to the, you know, to the funding agreement to
8 provide that additional funding.

9 And LD1 of Sutter County, the Star Bend
10 Setback Levee, they've been finalizing their
11 environmental compliance and working on real estate
12 acquisitions.

13 There's a number of payments that we've
14 authorized for payment. They have at least been
15 authorized through me. I'm not sure if they actually
16 got paid through the Controller's office or not.

17 On the ongoing work, we're processing the
18 invoices as they come in. And then it's a Controller's
19 office decision on whether to pay or not pay. And
20 they're currently, you know, not paying until the
21 budget situation and decisions that the Pooled Money
22 Investment Board will have to make regarding selling
23 bonds in the future.

24 But to the extent we possibly can, we're
25 trying to keep our, you know, internal processing

1 activities underway so that we're poised to move ahead
2 when we can.

3 Some things we can do, and there's other
4 things that, from a legal standpoint, that, you know,
5 that we can't do as far as making new commitments at
6 this time.

7 Moving down to Statewide Grants Branch. We've
8 had our Local Levee Evaluation Program, Local Levee
9 Urgent Repair Program.

10 And one of the big grants there, it's a
11 \$5 million cap in Orange County, qualified for the
12 maximum. So staff is working with them to get the work
13 completed on that.

14 And we have a number of technical review on
15 other levee evaluation applications, so recommendations
16 are underway there.

17 Floodway Corridor Program. Earl Nelson's
18 group is working with other staff within the division.
19 As you know, that the -- through that program, we
20 purchased a considerable amount of land in the Elkhorn
21 Basin. SAFCA also purchased a fair amount of acreage.

22 So we're working to kind of finalize, you
23 know, the restoration arrangements. And a portion of
24 that property we bought at Elkhorn would be used for
25 mitigation similar to another activity that's underway

1 for the Woodson Bridge property across the river from
2 where the Palisades used to be.

3 So this is one thing that we really want to do
4 to try to leverage our various programs. You know,
5 we've got the Flood Corridor Program is one that has a
6 kind of a nonstructural bent to it to purchase lands to
7 provide flood risk reduction.

8 But we can combine those kind of purchases and
9 achieve those purposes and also help us out on our
10 project side with, you know, using some project funds
11 to develop mitigation areas.

12 So it's all part of the integrated concept.
13 The more we can accomplish multiple purposes with our
14 various programs, that's what we're trying to do.

15 PRESIDENT CARTER: Mr. Qualley?

16 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

17 Yep.

18 PRESIDENT CARTER: I don't believe the Board
19 has recently had a briefing or presentation on the
20 Floodway Corridor Program. Would it be possible to
21 schedule one of those in the very near future to just
22 kind of understand where the Department's headed in
23 terms of this program, size of the program, scope,
24 target areas?

25 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

1 We'd be happy to do that. Would the February Board
2 meeting be the appropriate time, or are you looking for
3 something sooner than that?

4 PRESIDENT CARTER: We'll ask Jay to work with
5 you to schedule. Perhaps February, or perhaps March.

6 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
7 Okay. We'd be pleased to do that.

8 PRESIDENT CARTER: Thank you.

9 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
10 Urban Levee Evaluations, Nonurban Levee Evaluations,
11 and Levee Repairs.

12 It's a lot of important information here kind
13 of giving the status on a number of different
14 evaluations that are underway and repairs that are
15 underway.

16 I've been up here droning on for quite a
17 while, so in the interest of time I was not going to go
18 into any particular detail on these things unless the
19 Board had questions.

20 And Mike Inamine, the chief of the office, is
21 here today; and if you did have questions, you'd
22 probably get a whole lot better answers out of him than
23 you would from me.

24 PRESIDENT CARTER: Mr. Punia?

25 EXECUTIVE OFFICER PUNIA: We have invited Mike

1 Inamine, scheduled for the February Board meeting, to
2 give the Board a good overview on this program.

3 PRESIDENT CARTER: Okay.

4 VICE-PRESIDENT HODGKINS: One of the things
5 that has occurred to me recently is: We have had a
6 couple of instances in the past where an excavation,
7 which is actually on the land side but outside of our
8 easement, has taken place.

9 I think, as the Board goes through potentially
10 updating its regulations, knowing whether or not the
11 information that's in the levee evaluations would be
12 helpful in identifying areas where the Board might want
13 to try and communicate with local land use agencies and
14 permitting agencies to make sure that excavations get
15 looked at for their potential impact in seepage.

16 So when you make that presentation, could you
17 chat a little bit about that?

18 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
19 And you're talking about excavations that are being
20 done by parties other than the State?

21 VICE-PRESIDENT HODGKINS: Swimming pools,
22 foundations, those kinds of things that -- they just
23 don't get any attention from levee security standpoint.

24 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
25 Okay. Very good observation. Thank you.

1 PRESIDENT CARTER: Any other questions for
2 Mr. Qualley?

3 BOARD MEMBER SUAREZ: Mr. President, I do. I
4 actually have three separate questions.

5 So going back to page 3, your Local Agency
6 Annual report for '08: Was the Department planning to
7 brief the Board in addition to just giving us the
8 report?

9 My thoughts are it would be good for -- to
10 have a discussion in a public forum just in case
11 members of the public wanted to react and to comment on
12 the findings of the report.

13 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
14 Jeremy Arrich gave the briefing to the Board last month
15 kind of on the scope of the report and kind of gave
16 some of the highlights.

17 We'd be more than happy to, you know, after
18 the public release and especially after the Board has
19 had a chance to really look at the details of the
20 report, I'd be more than happy to have him come back
21 and, you know, provide additional briefing and
22 additional opportunity for you to ask particular
23 questions that you had.

24 BOARD MEMBER SUAREZ: Thank you.

25 Mr. President, I think that might be helpful.

1 Again, one of the things I think we are useful now in
2 our new capacity is give the public opportunities to
3 react to some of the information that's being -- new
4 information that's being released.

5 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

6 And to the extent that questions occur to you as you're
7 looking at it ahead of the meeting, if you'd like to
8 share them with us ahead of time we might be able to
9 give a better response than at the moment. But of
10 course, your comments at the meeting will be welcome as
11 well.

12 PRESIDENT CARTER: And I believe on this one
13 we did ask Jeremy to -- we asked him when it would be
14 an appropriate time. And he said probably not -- as I
15 recall, it was probably not February, but most
16 certainly it would be ready in March --

17 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

18 Okay.

19 PRESIDENT CARTER: -- I believe. So we will
20 do that.

21 BOARD MEMBER SUAREZ: My second question has
22 to do with the TRLIA report. And I just wanted to make
23 sure that the Department was aware of issues relating
24 to the Mining and Geology Board.

25 My understanding is that there is some sort of

1 administrative action that's pending. I didn't see it
2 in your report. We're just learning about it
3 ourselves.

4 So I want the Department to be aware of it and
5 if you have any thoughts regarding what the
6 administrative enforcement that the sister agency
7 might -- the impact it might have on our permit, we
8 would like that opinion.

9 Then the last thing, I wanted to make sure
10 that you're going to be here for Item 11 on today's
11 agenda.

12 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
13 I'll be here for the duration of the meeting today.

14 BOARD MEMBER SUAREZ: Thank you.

15 PRESIDENT CARTER: Any other questions for
16 Mr. Qualley? Thank you very much.

17 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
18 Thank you.

19 PRESIDENT CARTER: Moving on to Item 6, Three
20 Rivers Levee Improvement Authority Monthly Report.
21 Good morning, Mr. Brunner. Welcome.

22 MR. BRUNNER: Good morning, President Carter,
23 Members of the Board. I'll be going through my monthly
24 report, giving you the highlights and updates from the
25 last meeting. And Member Suarez, I'll cover the

1 geology in my discussion.

2 Starting off with the beginning here for our
3 administrative items that are listed, the -- we did
4 submit the letter yesterday to Ms. Cahill on the
5 administrative finding that's there in regards to our
6 relationship with the Board. So Ginny is looking at
7 that, and she'll give us her feedback on that in the
8 coming days. So it did come in, and looking forward to
9 the response.

10 In regards to funding, we are in the same
11 situation where we were, reported last time. I think
12 George went over that pretty well with his report.

13 From the TRLIA point of view, we do have
14 funding that have come in from the state and also local
15 shares that carries us all the way up through April --
16 not April, but through March.

17 And at that time, we'll begin ramping up to do
18 construction because the flood season ends at
19 April 15th, and then we start to do the work. At that
20 point, we have major construction projects that we
21 start to place under contract again, and that's where
22 we need much larger sums of money to be able to go
23 forward.

24 So for Three Rivers, that's when the time
25 period starts to come to be the crunch with the state

1 budget issue.

2 Our contracts are in place as far as money
3 flow to support the efforts. It's really pending the
4 outcome now of the state budget. Does the Treasurer
5 have money to send to us?

6 So we're watching that closely, just like
7 everyone else in regards to that.

8 Moving to the second page of my report is a
9 highlight under the Phase 4 work for the Feather
10 Segment 1. We do continue to monitor the crack that's
11 on Segment 1.

12 There was a request since the last meeting
13 that we had here in December to apply additional
14 Visqueen on the waterside of the levee. We did that
15 immediately, working with DWR cooperatively on that.

16 I think all parties believe that the crack at
17 least appears stable, from all the data that we have
18 that's coming back from the inclinometers. So we're
19 continuing to monitor that really very closely.

20 And we're both jointly working with the State
21 and the Corps on our emergency response plan, should it
22 ever rain again really hard and we have to respond. We
23 need to make sure that we're prepared.

24 On Segment 2, we -- around the time of our
25 last meeting or right after our last meeting with you

1 all, we did receive a letter from the State Mining and
2 Geology Board, and that was regards to our operations
3 on our borrow sites that are somewhat offsite.

4 We believe that they're really adjacent. Many
5 of you saw those when you did tour the -- right by the
6 Teichert Construction site where we purchased
7 property -- actually not property. We purchased the
8 soil so we could build our levee.

9 We did meet with SMARA and the Geology Board,
10 Steve Testa, and had a discussion with them right
11 before the New Years. The issues that came up during
12 that time dealt with were we going to sell soil
13 offsite; and we're not doing that, so that issue went
14 away.

15 And then the issue came up was whether or not
16 if it was the sites that we have, there's a -- we call
17 the platter site where the Teichert Construction
18 building is.

19 And then there's an area just northerly of
20 there on Ella Boulevard where we're overexcavating a
21 detention basin for RD 784. That's -- they wanted it
22 bigger, so we're using the soil there to overexcavate
23 that and at that point --

24 SECRETARY DOHERTY: Where was that located,
25 please?

1 MR. BRUNNER: That's on Ella Boulevard.

2 SECRETARY DOHERTY: Okay.

3 MR. BRUNNER: Up in that area.

4 So there was already a detention basin there
5 and had the right type of soil that we needed for our
6 levees, so we went in a cooperative venture with RD 784
7 to overexcavate, and that provided some soil for our
8 levees, so we have been hauling from there.

9 We considered the efforts on the borrow sites
10 to actually be exempted or not really applicable. We
11 did submit an application to make them aware, and
12 inspectors have been to the site and looked at us
13 before.

14 I was actually surprised by the reaction from
15 the State Geology Board and their response. We have
16 met with them. We are cooperatively meeting. We're
17 going to go to their February 5th meeting, the Board.

18 My understanding is at that time we'll either
19 have an exemption that will be given to us for our
20 project, or the two borrow sites that are outside, not
21 immediately adjacent to the site -- in their
22 terminology -- will receive their go-ahead to use the
23 sites on it.

24 As we work through that, we are working with
25 DWR. Right after we did get the notice from the Board,

1 from the Geology Board, I did make contact with DWR
2 staff. I'm not sure how much they elevated that
3 through the staff, but it was there for them to be
4 aware of.

5 As we go forward on the issue, we welcome
6 participation from the Board and involvement as we
7 prepare for the February 5th meeting and presentation
8 and working with them on that particular issue.

9 Is there another -- is there any more comments
10 on that specifically?

11 BOARD MEMBER SUAREZ: Mr. President, I would
12 like to ask Mr. Punia to make sure that a staff member
13 attends the February 5th meeting of the Mining Board.

14 My understanding, it is an enforcement action
15 hearing that's going to take place; so I would like to
16 make sure that we get a report from staff on what
17 occurred at that meeting.

18 PRESIDENT CARTER: Yeah.

19 EXECUTIVE OFFICER PUNIA: We are aware of that
20 violation, and we have a copy of that. And we will be
21 glad to attend that meeting and report back to the
22 Board.

23 MR. BRUNNER: Yeah. As enforcement action, so
24 far within the reaction that we've had working with
25 their staff and their Executive Director, that has not

1 really come that way at all.

2 In fact, the issues that they thought was why
3 they sent the letter were actually -- were removed once
4 we had a discussion and clarified what exactly we were
5 doing.

6 So we'll definitely follow up and working with
7 them on that and welcome the participation.

8 The -- on the -- continuing on with items on
9 Segment 2. We are monitoring the funding for our
10 project. And now that we do have the 404 and 408
11 permits, we can go ahead and start working those areas
12 once we can award the contracts and get going. So
13 we're looking forward to doing that very quickly.

14 On item number D on the third page, the
15 cooperative agreement. We did go back to our members
16 of our board, the RD 784, the county, and also Three
17 Rivers.

18 And I do have the signed copies of the
19 cooperative agreement. I understand last meeting you
20 all signed it too. So we can staple them together, and
21 we have it signed here. So I'll leave it here, and
22 potentially during a break we can sort this out and
23 take it back, and that -- so that one's done.

24 That's in regard to the cooperative agreement
25 for the indemnification on that. So that's good.

1 DEPUTY ATTORNEY GENERAL CAHILL: I would like
2 to thank Mr. Brunner for that.

3 MR. BRUNNER: Thank you.

4 On item number E, on the burial ground, that
5 came up on the report too with Mr. Qualley. We made
6 progress on this. And this is the new burial ground
7 that's right down by Star Bend, northerly of Star Bend,
8 in that area.

9 We've been working cooperatively with the
10 Indian tribe, Enterprise Rancheria, which is the most
11 likely descendant that's been appointed for that work.

12 Last Sunday, I did attend the Indian tribal
13 council meeting in Oroville, explained to them the
14 burial ground, what we know today, our investigative
15 efforts as to how we will try to define the exterior
16 boundaries.

17 A portion of this burial ground is under the
18 design of the levee. We haven't built it yet. It's in
19 the tie-in area and part of the part B work of your
20 encroachment permit. So we haven't started there yet.

21 But it's there. It goes underneath the levee.
22 So we need to come up with a way of how we work with
23 them and also the Corps and DWR to build around it,
24 build on top of it. How do we do that? It's really
25 key that we find the exterior boundaries of it.

1 So we were able to reach agreement of how
2 we'll do that investigative work to define the
3 boundaries. That work started yesterday morning, the
4 investigative work. We have our archaeologist, Native
5 American Indian monitors, at site. So we're working
6 cooperatively, and I think we'll get to the solution.

7 Once we start to ramp up on the construction
8 activity, we will then move towards hopefully having a
9 final solution that we can implement right away. If
10 not, we'll move it a little bit farther into the
11 construction season and move forward from there on it.

12 We will start the northerly tie-in right away
13 because that doesn't have an issue. This affects the
14 southerly tie-in to the levee.

15 So I'll give you more input as we go through.
16 I don't have a final solution how we relate to that,
17 how we fix the problem yet, because we need to know the
18 boundaries and the size of the burial ground before we
19 can start to modify things. We do have ideas of what
20 we might be able to do, but I don't have a final
21 solution yet.

22 That's the end of my report. If there's any
23 questions, I'll be glad to respond to any additional
24 questions.

25 PRESIDENT CARTER: Thank you, Mr. Brunner.

1 Any questions for Mr. Brunner?

2 Thank you very much.

3 MR. BRUNNER: Thank you.

4 PRESIDENT CARTER: Okay, ladies and gentlemen,
5 we'll move on to Item 7, the Consent Calendar, for this
6 monitoring. We have six items on the consent -- oh,
7 I'm sorry; Mr. Qualley?

8 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
9 President Carter, there's one very important kind of a
10 heads-up item that I intended to do as part of my
11 report, and I just didn't have it in the right place in
12 my folder, so I overlooked it.

13 If I may provide an update on the National
14 Committee On Levee Safety?

15 PRESIDENT CARTER: Absolutely.

16 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:
17 Title 9 of the Water Resource Development Act of 2007
18 authorized a committee on levee safety charged with
19 developing recommendations and a strategic plan for a
20 National Levee Safety Program.

21 Rod Mayer from DWR and former DWR deputy
22 directors Les Harder and Steve Verigin both
23 participated in the -- as committee members; and of
24 course you, yourself, President Carter, and others from
25 California were involved as members of the review team.

1 This is has been a project or effort that's
2 been managed by the Corps. And last week, the
3 committee wrapped up three months of intense work. I
4 emphasize the word intense. The plenary sessions alone
5 involved seven separate three-to-four-day meetings in
6 five cities across the country, all of them outside of
7 California.

8 And the status right now is they have
9 completed the draft report. And once the report is
10 final -- it won't be final until it's been cleared
11 through the Office of Management and Budget, and
12 there's no specific time frame set for that.

13 But once OMB approves it, there will be a
14 media event and public workshops, and so I can't give
15 you the recommendations out of it right now because it
16 needs to go through the OMB process.

17 But basically, it represents the best thinking
18 of a really diverse group of levee safety experts from
19 around the country with federal, state, local, and
20 private perspectives.

21 And it does not represent the unanimous
22 opinion of committee members, nor do the committee
23 member recommendations necessarily reflect the
24 positions of the parent organizations.

25 They very -- when the Corps crafted this, they

1 very specifically wanted to bring together the best
2 minds and just focus on the issue, to try to get the
3 best possible set of recommendations.

4 And the committee members are going to
5 continue to be engaged in this effort, probably for
6 another year, but the pace won't be as intense as it
7 has been the last three months.

8 And some of the remaining activities are
9 primarily involving outreach, conferences, public
10 meetings, briefings, and possibly continued refinement
11 of recommendations and development of legislation.

12 Rod wasn't available this morning because he's
13 actually participating in a call with the other levee
14 safety committee members. But if the Board would like,
15 he could provide a briefing at the next meeting of the
16 Board to give you more details; and hopefully by then,
17 OMB will have approved it, and he can share some of the
18 recommendations.

19 PRESIDENT CARTER: Thank you.

20 Just to add, I had been on the review team and
21 participated in that. And I can assure you the effort
22 has been intense by all of the full committee members.

23 And they have -- my understanding is they were
24 to make recommendations to Congress either this week or
25 next week. Is that correct?

1 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

2 It was scheduled to take place this week. And
3 honestly, I'm not sure if they had to wait for the OMB
4 clearance before they did that. I suspect they do.

5 PRESIDENT CARTER: But they're doing some very
6 good work.

7 So we would be delighted to have Mr. Mayer
8 come, perhaps at our next meeting if that's an
9 appropriate time, to brief the Board on that.

10 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

11 Okay. Well, we'll be in contact with Jay on that.

12 PRESIDENT CARTER: Great.

13 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY:

14 Thank you.

15 PRESIDENT CARTER: Okay. As we started, we'll
16 go through the Consent Calendar. We have six items on
17 the Consent Calendar. As you recall we had a brief
18 discussion about how we want to handle these when we
19 approved the agenda this morning.

20 Also, please let the record reflect that Ms.
21 Rie has joined us in the meeting, welcome.

22 As we recall, we did not have letters from the
23 Corps for these. It was staff's recommendation to
24 remove them from the calendar. The Board decided to go
25 ahead.

1 I know we have a Corps representative with us
2 now. Perhaps, Mr. Sander, might you be able to comment
3 on the status of the Corps' comments on the Consent
4 Calendar for today? Not to put you on the spot or
5 anything.

6 (Laughter)

7 MR. SANDER: Good morning, Members of the
8 Board, Chairman. Jim Sander, US Army Corps of
9 Engineers.

10 On the six permits that are on your Consent
11 Calendar, I believe we have responded to 18294; and you
12 should have a letter from the Corps on 18294.

13 The other permits have been -- the review has
14 been completed on them and the packages prepared for
15 the Board. They are awaiting the signature of the
16 Levee Safety Officer who is currently out of the
17 district and won't be back until next Tuesday. We
18 expect to have those signed next week.

19 PRESIDENT CARTER: Is there any indication
20 from the Corps with regard to -- are any of these
21 permits under consideration for not supporting?

22 MR. SANDER: No. They are all fairly
23 routine-type encroachment permits for docks and
24 stairways, so we do not anticipate any problems with
25 those permits. We are planning to recommend approval.

1 PRESIDENT CARTER: Okay.

2 SECRETARY DOHERTY: Mr. Sander, I have a
3 question for you. One of our exhibits that we have for
4 Vicki Pfingst says one of the conditions was:

5 Permittee shall notify the district one
6 week in advance of the start of
7 construction.

8 Was that done? I mean, now we're asking to
9 approve it. It's already finished. It's over. Did
10 she notify DWR that she was going to --

11 PRESIDENT CARTER: It may not -- Mr. Sander
12 may not know that. It may be more appropriate for our
13 staff, that question.

14 MR. SANDER: I do not know.

15 SECRETARY DOHERTY: Jon, do you know?

16 CHIEF YEGO: Jon Yego, DWR. That is actually
17 just a standard condition within the permit. So --

18 SECRETARY DOHERTY: So they don't have -- they
19 can ignore it?

20 CHIEF YEGO: Basically, for this situation,
21 yes.

22 SECRETARY DOHERTY: All right.

23 PRESIDENT CARTER: Any other questions for
24 Mr. Sander?

25 BOARD MEMBER RIE: Yes.

1 PRESIDENT CARTER: Ms. Rie.

2 BOARD MEMBER RIE: Why do we need a signature
3 from the Levee Safety Officer? Why not just send us an
4 e-mail and say the Corps has no objections to the
5 issuance of these permits?

6 MR. SANDER: As the Board has recently had
7 changes in the way they conduct their business with
8 respect to the encroachment permits, the Corps of
9 Engineers has also had changes in their Inspection of
10 Completed Works Program in the development of the
11 National Levee Safety Program.

12 One of those changes is for the districts, the
13 41 districts throughout the Corps to designate a Levee
14 Safety Officer, and the Levee Safety Officer is
15 required to sign all encroachment permits as they are
16 issued or recommendations are made on them to another
17 sponsor like the Central Valley Flood Protection Board.

18 BOARD MEMBER RIE: Well, I would think if the
19 signature is forthcoming, and if the Corps is
20 recommending the approval, that our Board can move
21 forward, that it's not a condition of our Board to have
22 that particular signature.

23 I'm just concerned that these permits are
24 getting delayed for months on end.

25 MR. SANDER: Again, we have been working with

1 the Board and the staff of the Board to streamline our
2 processes and also to improve our coordination.

3 We have added staff to our flood protection
4 and navigation section so we would have more staff
5 available to review the permits that come in and move
6 them through in a more timely manner.

7 BOARD MEMBER RIE: Okay.

8 PRESIDENT CARTER: Just FYI, Vice President
9 Hodgkins and Mr. Punia, Mr. Hester, and I met with
10 Mr. Sander and the colonel and members of the colonel's
11 staff, and we were very heartened by the Corps' efforts
12 on this.

13 As Mr. Sander said, we are working with the
14 Corps to try to streamline the process. They also have
15 committed to having a -- what I refer to as a pizza
16 party, but a party over the weekend, a meeting over the
17 weekend, to go through the more than 35 permits that
18 are in backlog for them, to try and get through as many
19 of those as possible over a weekend in the very near
20 future.

21 So they are making concerted efforts to try
22 and clear the backlog and improve the process. Some
23 improvements have been made, and we aren't where we
24 want to be yet; but we're moving directionally in the
25 right direction.

1 And I want to thank Mr. Sander and his staff
2 for those efforts and look forward to continued
3 improvement in the process and appropriate levels of
4 effort.

5 MR. SANDER: Right. We recognize the fact
6 that the permits have not been reviewed in as timely a
7 manner as could be done, and we are committed to
8 working with the Board to improve that process.

9 Again, as Ben mentioned, we have set up a date
10 for an interdisciplinary staff to review all 35 of the
11 backlog permits and work through as many of those as
12 possible.

13 We think about two-thirds to three-quarters of
14 those will be fairly standard requests for encroachment
15 permits that will be able to be worked fairly rapidly.
16 The others may require some more technical analysis to
17 get through.

18 PRESIDENT CARTER: Okay. So hearing that,
19 we'll entertain a motion on the Consent Calendar.

20 BOARD MEMBER BROWN: Mr. Chairman, I'll make a
21 motion that we authorize Mr. Punia to go ahead and sign
22 the approval of these permits listed with the approval
23 of the Corps of Engineers forthcoming.

24 PRESIDENT CARTER: Okay. So there's a motion
25 to approve the Consent Calendar and delegate the

1 authority to the General Manager to sign those permits
2 subject to the receipt of Corps recommendations to
3 approve.

4 Is there a second?

5 VICE-PRESIDENT HODGKINS: Second.

6 PRESIDENT CARTER: Okay. Mr. Punia, would you
7 call the roll?

8 EXECUTIVE OFFICER PUNIA: Board Member Emma
9 Suarez?

10 BOARD MEMBER SUAREZ: Aye.

11 EXECUTIVE OFFICER PUNIA: Board Member Butch
12 Hodgkins?

13 VICE-PRESIDENT HODGKINS: Aye.

14 EXECUTIVE OFFICER PUNIA: Board Member Teri
15 Rie?

16 BOARD MEMBER RIE: Aye.

17 EXECUTIVE OFFICER PUNIA: Board Member John
18 Brown?

19 BOARD MEMBER BROWN: Aye.

20 EXECUTIVE OFFICER PUNIA: Board Member Lady
21 Bug?

22 SECRETARY DOHERTY: Aye.

23 EXECUTIVE OFFICER PUNIA: Board President Ben
24 Carter?

25 PRESIDENT CARTER: Aye. So the Consent

1 Calendar is approved unanimously.

2 Mr. Sander, thank you very much.

3 MR. SANDER: Thank you.

4 PRESIDENT CARTER: Before we proceed to the
5 next item, there was a member of the public who was a
6 little bit late, wanted to comment as part of Public
7 Comment. I'd like to give them the opportunity now
8 before we proceed to the next item.

9 So Mr. Ruiz? And Mr. Ruiz, we'd appreciate if
10 you'd limit your comments to five minutes; and in the
11 future, if you wish to address the Board under Public
12 Comment, please be here on time.

13 MR. RUIZ: Certainly. And I apologize for
14 that, and I was going to go into a long spiel, but
15 hearing Mr. Sanders' comments, I think I just have a
16 couple points to point out.

17 I am referring to a letter dated January 6th
18 of '09 that I submitted to the Board along with the US
19 Army Corps of Engineers.

20 Our one main point with our permit number
21 18323 is just the simple fact that we're looking at a
22 February 2009 date before -- actually, I should say
23 February this next month before we'll have to call the
24 whole project off for our fish screen project.

25 And I understand you have the letter, so I

1 won't belabor the letter's point, but I just wanted to
2 stress one main point from our perspective and the
3 water company's stockholders' perspective that it's
4 been a year now since we submitted our permit.

5 And we are looking at, besides the \$400,000 of
6 increased costs due to the delay of not getting it
7 finished in '08, the fact that we are looking at not
8 completing the project if we can't get the permit
9 issued by February '09. And that's only about a month
10 away.

11 Because we have lead times to deal with with
12 pipe manufacturing and fabrication, and in order to get
13 out of the river by the October 1 date, we need to know
14 at least by February, mid February, whether the permit
15 will actually be obtained.

16 And that's why I was just wondering, hearing
17 Mr. Sander speak about the 35 permits that are in
18 backlog and that maybe two-thirds or three-quarters of
19 them will be issued, I was just wondering if maybe that
20 was one of ours so that I can bring some input back to
21 our stockholders and my board as well.

22 I just wanted to reiterate that one main
23 point. We're under the gun on a time line, and we're
24 mandated by law to install fish screens for our
25 diversions on the Sacramento River.

1 And again, besides the \$400,000 with the delay
2 further on through the year and looking into 2010, we
3 won't be able to complete the project with the funds
4 available.

5 And that's pretty much all I wanted to say.
6 Thank you very much for allowing me to speak.

7 PRESIDENT CARTER: Thank you Mr. Ruiz. Your
8 permit is one of those on the backlog. At this point,
9 I'd encourage you to maybe touch base with Mr. Sander
10 here today offline and find out or get his perspective
11 on the status.

12 MR. RUIZ: Yes. And that's one of our
13 frustrations is that -- and he mentioned it as well --
14 the timeliness of their response to our hydraulic
15 evaluation. They had little questions about that.

16 It's just been a time line -- a frustrating
17 time line for us to, now that -- especially that we're
18 under the gun -- to be waiting for a month or two for
19 comments on certain aspects of our permit.

20 PRESIDENT CARTER: Okay.

21 MR. RUIZ: That's a good point. I will do
22 that.

23 PRESIDENT CARTER: Thank you very much.

24 BOARD MEMBER RIE: Question?

25 PRESIDENT CARTER: Yes.

1 BOARD MEMBER RIE: This is to the staff.

2 Is there any other items holding up this
3 permit other than Corps sign-off?

4 CHIEF ENGINEER HESTER: Yes. There was an
5 e-mail this week that came in from the Corps. They
6 were requesting some additional hydraulic analysis for
7 their review. The hydraulic analysis that was
8 submitted back in December was not sufficient to obtain
9 the Corps review.

10 BOARD MEMBER RIE: What about from the staff's
11 perspective? Has he met all the requirements of our
12 Board?

13 CHIEF ENGINEER HESTER: We did submit this --
14 we agendaized the application back in the summertime.
15 I believe -- in fact, in the time line in the letter,
16 it shows that the permit was approved at our June 20th
17 Board meeting.

18 And so the Board staff was satisfied with the
19 application at that time, and it was submitted when we
20 received it to the Corps for review.

21 So it's the additional review from the Corps
22 to make sure that there are no hydraulic impacts
23 associated with it.

24 BOARD MEMBER RIE: So our Board has already
25 approved the permit with the condition of the Corps

1 sign off?

2 CHIEF ENGINEER HESTER: That's correct.

3 BOARD MEMBER RIE: So Corps sign-off is the
4 only thing holding up this permit?

5 CHIEF ENGINEER HESTER: That's correct.

6 BOARD MEMBER RIE: Okay.

7 PRESIDENT CARTER: Any other questions? Okay.

8 Ladies and gentlemen, let's take a ten-minute
9 recess. And at that point, we'll reconvene and
10 consider our requested actions.

11 Thank you.

12 (Recess)

13 PRESIDENT CARTER: We'll go ahead and continue
14 with our meeting.

15 Ladies and gentlemen, as you recall, we are on
16 Item 9, Requested Actions. This is -- Item 9 is Cache
17 Creek Critical Erosion Site, North Levee Setback
18 Project, Eminent Domain For Easements.

19 We have a number of resolutions to consider
20 here, Resolutions of Necessity, and environmental
21 findings. Mr. Wheeldon, good morning. Welcome.

22 WATER RESOURCES PROJECT MANAGER WHEELDON:
23 Good morning. Thank you.

24 My name is Dave Wheeldon. I work for the
25 Department of Water Resources in the Levee Repairs

1 Branch.

2 Item number 9 on the agenda is the Cache Creek
3 Critical Erosion Site North Levee Setback Project
4 Eminent Domain For Easements.

5 PRESIDENT CARTER: Mr. Wheeldon, if I might --
6 I apologize for interrupting, but I just want to give
7 people an idea of what the process is here.

8 We're going to have the staff presentation all
9 the way through the presentation of the Resolutions of
10 Necessity.

11 Then we'll open it up to questions from the
12 Board.

13 There will be a request to adopt the
14 resolution.

15 We'll then open it up to additional questions
16 from Board staff and the public and proceed that way.

17 So just to let people know how we're going to
18 handle this. So Mr. Wheeldon, please proceed.

19 WATER RESOURCES PROJECT MANAGER WHEELDON:
20 Thank you.

21 I'm going to be presenting this morning the
22 background information, environmental documentation --
23 or we will -- the Department will be presenting the
24 background information, the environmental
25 documentation, and the real estate efforts that are

1 necessary for Board approval of the project and
2 adoption of the related Resolutions of Necessity.

3 In addition to the assistance provided by
4 numerous Board and DWR staff, the following key
5 personnel have significantly contributed to the
6 development of the Cache Creek North Levee Setback
7 project, many of whom are here today and will be
8 speaking to this subject.

9 Again, my name is Dave Wheeldon. I'm the
10 Sacramento River Bank Protection Project Manager of
11 which the Cache Creek projects fall under.

12 Pal Sandhu is DWR Levee Repairs Branch Chief
13 and the Sacramento River Bank Program Manager.

14 Mike Inamine is DWR Levee Repairs and
15 Floodplain Management Office Chief.

16 Paul Farris, who will be also speaking today,
17 is the DWR Real Estate Branch Chief.

18 Kip Young is in the DWR Levee Repairs Branch,
19 is the environmental scientist for the Sacramento River
20 Bank Protection Project.

21 And then Nancy Finch, Ward Tabor, and Karin
22 Shine from DWR Office of Chief Counsel.

23 The agenda for the presentations and
24 discussion for the Board Item number 9 are as follows,
25 and Ben touched on this; I'll just review it quickly:

1 I'm going to be presenting the project
2 background. Then I'll introduce Kip Young who will
3 present the discussion of the environmental documents.

4 That will be followed by the introduction of
5 the Resolution of Necessity requirements. Nancy Finch,
6 from the Office of the Chief Counsel, will be
7 presenting that.

8 Once those requirements are presented, Paul
9 Farris and myself will discuss the supporting
10 information for each of those resolutions.

11 And then, as Ben mentioned, at that point
12 we'll open up it for discussion and adopt -- move into
13 the adoption of mitigated negative declaration and
14 project approval. And then there will be a discussion
15 on that item and a Board vote.

16 Then we will move on to the request for the
17 adoption of Resolutions of Necessity for the other four
18 resolutions. And for each resolution, there will be
19 the presentation of the resolution, then discussion,
20 then questions, and then vote, then move on to the next
21 resolution.

22 Is that how you understand it, Ben?

23 PRESIDENT CARTER: We'll play that by ear.

24 WATER RESOURCES PROJECT MANAGER WHEELDON:

25 Okay.

1 PRESIDENT CARTER: It may be appropriate to
2 perhaps group a couple of the resolutions together,
3 given the parties that are involved. We'll just play
4 it by ear.

5 WATER RESOURCES PROJECT MANAGER WHEELDON:
6 Right. And there's going to be a lot of folks coming
7 back up and sitting down again, so bear with us as we
8 go through this this morning.

9 I'm going to be providing some background on
10 the flooding history and related issues for the Cache
11 Creek system. This picture shows a failure along the
12 right bank of the Cache Creek in 1983 which is the same
13 levee that our sites are located on.

14 The two Cache Creek sites that we're
15 discussing today are located at levee mile 3.9 and 4.2
16 on the left bank. These two sites were declared
17 critical under the Governor's Declaration of State
18 Emergency for the state's levee system in
19 February 2006. The Army Corps of Engineers issued a
20 Declaration of State Emergency November 7, 2006.

21 These declarations provide for fast track
22 repair of the critical sites before the next flood
23 season, and these two sites were part of those original
24 declarations.

25 There were originally 104 sites included in

1 the Governor's emergency declaration, and these two
2 sites, Cache Creek 3.9 and 4.2, are the last two that
3 have yet to be repaired. So all -- 102 of the 104
4 critical erosion sites have been repaired, and these
5 are the last two.

6 Currently, the Cache Creek levee system
7 provides a ten-year flood protection which equates to
8 approximately 31,000 cubic feet per second of flow
9 through the channel. See if I can do it this way.

10 The table on the right and the graph show that
11 this value has been exceeded numerous times in the
12 recorded history of the Cache Creek channel, so
13 anything above the 31,000 feet which is the design
14 capacity of the levee, you start impacting the
15 freeboard of the existing levee and then eventually
16 will be overtopped.

17 Significant failures include -- or significant
18 flood events include the 1983 January event which saw
19 33,000 cubic feet per second coming through the
20 channel. That's here. The largest recorded flows were
21 found in 1958 at 41,400 feet.

22 This figure shows the approximated inundation
23 area that would result from a levee failure at either
24 of the two locations, levee mile 3.9 or 4.2. Included
25 in this inundation area are some school buildings.

1 That's around in this area here.

2 We have school buildings that occupy a Head
3 Start program. There is public roads. There is State
4 Highway 113 that runs through a major portion of the
5 inundation area, significant agricultural and farm
6 operations, and residential areas.

7 Flooding would result in a shallow inundation
8 of this area; but nonetheless, this is the area that
9 would be flooded if a failure occurred at either of
10 those locations.

11 DWR has previously constructed three setback
12 levees along the Cache Creek system located at levee
13 mile 0.8, 1.1, and 2.4. You can see these in relation
14 to our two subject sites, levee mile 3.9 and 4.2.

15 Here's a picture representing the conditions
16 of Cache Creek 3.9. Just to take note from this photo
17 is the narrowness of the channel, the steep banks that
18 you're seeing on both sides.

19 You can see a little bit of the erosion that
20 characterizes these locations at this point here.
21 Also, note the significant vegetation along both banks
22 of the channel.

23 Similarly, at Cache Creek 4.2, you're seeing
24 the same conditions. Erosion -- this site actually has
25 an erosion that is advancing nearly to the toe of the

1 existing levee, and that's at this point right here.

2 It's difficult to see in this picture.

3 But again, you can see the steepness of the
4 banks, the narrowness of the channel, and the extensive
5 vegetation that's currently in place.

6 To determine the most appropriate bank
7 protection solution, DWR conducted an alternatives
8 evaluation and selection process.

9 Two main alternatives were reviewed, the first
10 being an in-stream repair, which is the typical bank
11 erosion repair common to most of the work done under
12 the Sac Bank program, which consists of stabilizing the
13 eroding bank with soil and rock and then placing a
14 layer of soil on top of that and coming in and
15 installing plants and grasses, trees, and shrubs and
16 woody material to contribute to the mitigation of the
17 site.

18 The second alternative reviewed was the
19 setback levee. And the setback levee was determined to
20 be the preferred alternative.

21 In developing this selection, some preliminary
22 information was developed for each site and each
23 alternative. The preliminary design consisted of a
24 stability analysis, hydrologic analysis, and
25 development of estimated quantities for each of the

1 alternatives.

2 This led into a preliminary cost estimate; and
3 in addition, an analysis of the environmental impacts
4 for each of the repairs were conducted.

5 The final selection of the setback levee
6 alternative was based on the robustness of the design
7 of the setback levee relative to the in-stream repair,
8 the environmental considerations, and the significant
9 cost savings associated with the setback levee which
10 was about \$2 million less than the in-stream
11 alternative.

12 This figure shows a planned view of the
13 proposed in-stream alternative that was evaluated
14 during the alternative selection process. This is the
15 left bank that you see here. That shows the extent of
16 the rock slope protection, the placing of the rock and
17 soil-filled rock covered with the soil and the
18 plantings on the left bank.

19 That's -- our initial intent was to look at
20 that repair on the left bank only. By placing this
21 extra material into the channel, it decreased the
22 channel volume -- or the volume of flow that the
23 channel was able to convey. And thus, it raised the
24 water surface elevation.

25 The raise in water surface elevation greatly

1 exceeded the maximum core requirement for change in
2 water surface elevation which was a tenth of a foot.
3 And I think we were seeing a change in water surface
4 elevation on the order of a foot, so it's pretty clear
5 that just doing the repair on the left bank was not
6 adequate.

7 So to alleviate that problem, the second part
8 of the design included an excavation of the opposite
9 bank in order to create more volume in the channel to
10 lower that water surface elevation to the acceptable
11 limit.

12 So you can see the in-stream repair not only
13 deals with the eroding channel on the left bank, but
14 the right channel also has to be excavated to
15 accommodate the change in water surface elevation.

16 Similarly, at levee mile 4.2 -- and to note
17 here on this slide, the left -- or the right bank, the
18 excavation on the right bank, you can see the
19 significant vegetation that would have to be removed to
20 accommodate that excavation, and that just adds to the
21 mitigation requirements that we would have to do to
22 accommodate that loss of vegetation.

23 This figure shows a typical cross-section of
24 the in-stream repair alternative to maybe better
25 clarify the two planned views that I just showed you.

1 That -- the top portion shows the conditions
2 of the levee before the repair work was in place, and
3 note the steep bank on the left bank.

4 After our repair, you can see the added
5 material into the channel that we've placed, the rock
6 slope, the rock, the soil-filled rock, and then the
7 launch rock at the bottom with the plantings and the
8 in-stream woody material on top of that.

9 And then related to that, you can see the
10 opposite right bank, how it's been excavated to
11 accommodate that additional volume lost in the original
12 channel.

13 The preferred alternative shows the -- is the
14 setbacks; and this figure shows the two setbacks
15 located at levee mile 3.9 and 4.2 and how they relate
16 to each other and to the land they're being placed on.

17 Initially, the preferred design would have
18 included connecting these two setbacks with a single --
19 turning it into a single setback instead of splitting
20 it up into two. But to minimize the land impacts, we
21 split up the setback into two setback levees.

22 One other thing to note on this figure: Due
23 to the construction of the setback levee at 3.9, we'll
24 have to relocate County Road 17A and 99A. Its original
25 alignment would have been inside of the setback levee,

1 so part of the work would be to realign that road along
2 that new alignment there.

3 This figure shows a close-up of the setback
4 levee at 3.9. The levee, or the setback levee, follows
5 this alignment here. We will include an access ramp
6 along the old road here.

7 There are two notches in the existing levee
8 that will be excavated once the new setback levee is
9 completed, and this is to ensure that no water becomes
10 impounded if the first level gets overtopped. And then
11 when the flood waters recede, the water can go back
12 into the original channel.

13 Similarly, at levee mile 4.2, this shows the
14 alignment of the setback levee. It's a shorter
15 setback, so there's only one notch to be constructed to
16 free the impounded water.

17 There were some concessions made in this
18 design to accommodate some of the features of the
19 existing property which include we shortened the length
20 of the setback levee to accommodate a stand of trees
21 here that have sentimental value to the property owner,
22 and additionally a retaining wall was installed -- is
23 proposed to be installed at this location here to allow
24 for continued use of the shop at this location.

25 This figure shows a typical interval section

1 which will be the configuration that our setback levees
2 will follow. This includes a three-to-one slope on the
3 waterside, a two-to-one slope on the landside, the
4 compacted fill of the new embankment itself covered
5 with a four-inch ag base course on the top for the
6 access road.

7 Excavation of an inspection and foundation
8 trench is also required to be back-filled with
9 compacted fill. And this configuration meets the Army
10 Corps of Engineers' levee design standards.

11 One of the main drivers for selecting the
12 setback as the preferred alternative was the
13 significant difference in cost between the two
14 alternatives that we reviewed, the in-stream
15 alternative estimated to be about \$5.4 million versus
16 the setback alternative coming in at \$3.3 million. So
17 you see the savings of about \$2 million for the setback
18 alternative.

19 In order to construct the project, we had to
20 follow an environmental compliance path that includes
21 state and federal consultations that have been
22 completed.

23 Kip Young of the DWR environmental scientists
24 will be commenting on this further, but I'll just
25 briefly review the items that were consulted during

1 this process:

2 The federal Endangered Species Act and
3 California Endangered Species Act, the State Historic
4 Preservation Office for Cultural Resources was
5 consulted. State Water Resources Control Board for the
6 401 Water Quality Certification, if necessary, were
7 also consulted. California Fish and Game for streambed
8 alteration. The Corps of Engineers 404 dredging or
9 fill, and Department of Conservation Williamson Act.

10 PRESIDENT CARTER: Mr. Wheeldon, just one
11 moment.

12 WATER RESOURCES PROJECT MANAGER WHEELDON:
13 Yes.

14 PRESIDENT CARTER: Ms. Suarez?

15 BOARD MEMBER SUAREZ: Yes, excuse me.

16 Could you go back to the cost comparison
17 slide? I was -- you talk about the \$2 million savings,
18 and that's based, I guess, in part of what you think
19 the valuation of the property is, the purchase?

20 WATER RESOURCES PROJECT MANAGER WHEELDON:
21 Yes. That includes the partial land purchase for both
22 sites, yes.

23 BOARD MEMBER SUAREZ: Now does that include an
24 average of what you think? Or is that -- because I'm
25 sure the property owners have a different valuation of

1 that property.

2 WATER RESOURCES PROJECT MANAGER WHEELDON:

3 Right. Paul Farris will speak further on this later
4 on, but it's based on the most current appraised value
5 from a certified appraiser that was developed during
6 the real estate process.

7 BOARD MEMBER SUAREZ: Okay. Thank you.

8 BOARD MEMBER BROWN: Mr. Chairman?

9 PRESIDENT CARTER: Mr. Brown.

10 BOARD MEMBER BROWN: On your figure 6 on the
11 in-stream alternative, I'm still wondering why you had
12 to work on both sides of the channel.

13 WATER RESOURCES PROJECT MANAGER WHEELDON: The
14 narrowness of this channel makes it subject to
15 significant changes in water surface elevation if you
16 bring, you know --

17 BOARD MEMBER BROWN: I understand that, but
18 why couldn't you just work on one side and rock that
19 side and leave the other one alone?

20 WATER RESOURCES PROJECT MANAGER WHEELDON:

21 Well, you'd still have to --

22 BOARD MEMBER BROWN: It's stable.

23 WATER RESOURCES PROJECT MANAGER WHEELDON: The
24 left bank?

25 BOARD MEMBER BROWN: Yes, the -- well --

1 SECRETARY DOHERTY: The right bank.

2 WATER RESOURCES PROJECT MANAGER WHEELDON: The
3 right bank is stable, yes.

4 BOARD MEMBER BROWN: Well, the left bank is
5 too; isn't it?

6 WATER RESOURCES PROJECT MANAGER WHEELDON: Not
7 according to -- actually, no, it's not. I mean, there
8 is near-vertical cuts seen in the bank.

9 BOARD MEMBER BROWN: But it looks like it's
10 not eroded, I guess, is the point I'm making. And I
11 just wonder why you couldn't work on the one side and
12 expand the channel there without having to work on both
13 sides.

14 WATER RESOURCES PROJECT MANAGER WHEELDON:
15 Well, you could. But then you'd be -- the erosion is
16 actually coming up right to the point of the toe of the
17 levee.

18 So you're seeing erosion right here, and that
19 is approximately the toe of the levee. This is the
20 lower access road right here. So if you were to
21 excavate back into that, you'd actually be excavating
22 into the levee itself.

23 BOARD MEMBER BROWN: No, I'm talking about
24 excavating on the other side.

25 WATER RESOURCES PROJECT MANAGER WHEELDON:

1 Right.

2 BOARD MEMBER BROWN: Yeah. So just take that
3 out and rock that.

4 WATER RESOURCES PROJECT MANAGER WHEELDON: Oh.
5 Well, we don't need to rock the other side -- well,
6 there is some protection involved in that, yes, on the
7 opposite bank, but certainly not for the stability and
8 erosion protection that we're seeing on the left bank.

9 BOARD MEMBER BROWN: Okay. It just didn't
10 look like -- from your picture, it looked like it was
11 pretty stable on the left bank.

12 WATER RESOURCES PROJECT MANAGER WHEELDON: The
13 left bank is where we're seeing this erosion, and it's
14 not stable.

15 BOARD MEMBER BROWN: But it's eroding because
16 of the higher velocities there.

17 WATER RESOURCES PROJECT MANAGER WHEELDON:
18 Yes.

19 BOARD MEMBER BROWN: And if you expand the
20 right bank, then you would decrease that velocity also.

21 WATER RESOURCES PROJECT MANAGER WHEELDON: Oh,
22 I'm sorry. The right bank is showing as being
23 excavated, not expanded.

24 BOARD MEMBER BROWN: Okay.

25 Let's go, Mr. Chairman. Thank you.

1 WATER RESOURCES PROJECT MANAGER WHEELDON:

2 Okay. The major portion of our environmental
3 compliance, the CEQA Mitigated Negative Declaration has
4 been completed. And Kip Young will be speaking on
5 that.

6 The anticipated schedule for construction, if
7 we receive possession of these sites and are able to
8 proceed, would -- the goal would be to finish
9 construction by essentially the beginning of
10 November 2009.

11 Because it's a setback levee, we don't have
12 the normal environmental restrictions that are
13 associated with in-channel work, so this channel
14 construction is limited to weather conditions which
15 should be good up until, you know, early -- or late
16 fall/early winter of 2009.

17 The construction itself should be planned --
18 we plan on anticipating it taking two months with
19 construction started the first of September.

20 At this point, I would like to hand over the
21 presentation to Kip Young, the DWR levee repairs
22 environmental scientist who is working on the Sac Bank
23 program.

24 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:
25 President Carter, Board Members, Board staff. My name

1 is Kip Young, and I'm a staff environmental scientist
2 with the Levee Repairs Branch, and I primarily work on
3 the Sacramento River Bank Protection Project.

4 I'm up here to present the CEQA compliance for
5 the Cache Creek North Setback Levee Project Critical
6 Erosion Site, levee mile 3.9 and levee mile 4.2.

7 The CEQA -- the process of the CEQA started
8 with the submittal of a Notice of Completion and Notice
9 of Intent to adopt the mitigated neg dec for Cache
10 Creek north setback levee project critical erosion site
11 levee mile 3.9 and 4.2 as required by CEQA guidelines.

12 The documents were circulated for review, for
13 a 30-day public review, starting in October 20th and
14 expired on November 18th of last year.

15 The initial study and the proposed mitigated
16 neg dec was prepared to assess the proposed project's
17 potential effects on the environment and the
18 significance of those effects.

19 Using the results, the initial study and
20 the -- the proposed project would not have any
21 significant effects on the environment once mitigation
22 measures are implemented.

23 This conclusion is supported by the following
24 findings: No impact to public services, recreation,
25 population and housing; less than significant impacts

1 to air quality, aesthetics, mineral resources, land
2 use, and agricultural resources, public utilities and
3 service systems, traffic circulation.

4 The project would not substantially degrade
5 the quality of the environment, substantially reduce
6 fish and wildlife habitat, cause a fish and wildlife
7 population drop below self-sustaining levels, reduce
8 the number or restrict the range of special status
9 species, eliminate important examples of California
10 history or prehistory, achieve short-term environmental
11 goals to the disadvantage of long-term environmental
12 goals, have environmental effects that are individually
13 limited but cumulatively considerable, environmental
14 effects that would cause substantial adverse effects on
15 human beings, either directly or indirectly.

16 The implementation of the following mitigation
17 measures would reduce the potential environmental
18 impacts of the proposed project to less than
19 significant level:

20 For the biological resources, maintain a
21 20-foot buffer around the elderberry shrubs, conduct
22 preconstruction surveys for special status birds and
23 nesting raptors which includes the State-listed
24 Swainson's hawk, erect brightly colored fencing around
25 sensitive riparian habitat.

1 For the cultural resources, immediately halt
2 construction activities if any cultural materials or
3 human remains are discovered.

4 For hazardous materials, ensure employees
5 handling hazardous materials are trained in a safe
6 and -- handling and storage of these materials.

7 For hydrology and water quality, prepare a
8 stormwater pollution prevention plan which the -- which
9 will be included in the construction contract.

10 To reduce the noise, maintain and equip
11 construction equipment with noise control devices,
12 limit construction to the hours of 7:00 a.m. to
13 6:00 p.m., arrange construction equipment to travel to
14 minimize disturbance to occupied residence and limit
15 idling times, designate a disturbance coordinator to
16 receive all public complaints, and pre and post
17 construction paragraphs for any structures that are
18 within 15 feet of the heavy equipment operation, and
19 compensate any damage due to the construction
20 equipment.

21 We received one written comment which was from
22 Caltrans. They requested a traffic control plan and an
23 encroachment permit. A traffic control plan is
24 normally -- which would -- is normally included on our
25 construction contract which requires the contractor to

1 do. There will be no encroachment within the Caltrans
2 right of way.

3 Two more letters were received after the
4 30-day period from Fish and Wildlife and NOAA
5 Fisheries. US Fish and Wildlife determined the project
6 will not result in the take of Valley Elderberry
7 Longhorn Beetle with the mitigation measures
8 implemented.

9 And NMFS requires a contingency plan for the
10 spill of cement during wall construction which will be
11 included in the construction specifications.

12 In accordance with Section 21082-1 of CEQA,
13 the Board has independently reviewed and analyzed the
14 initial study and the final mitigated neg dec for the
15 proposed project and finds that the initial study and
16 the final Mitigated Negative Declaration reflect the
17 independent judgment of the Board.

18 The Lead Agency further finds that the project
19 mitigation measures will be implemented as stated in
20 the final Mitigated Negative Declaration.

21 And that's it.

22 PRESIDENT CARTER: Thank you. Questions?

23 BOARD MEMBER RIE: Yes.

24 You said that there isn't going to be any take
25 of elderberries. I was wondering if the mitigation

1 measures include planting elderberries?

2 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

3 No planting -- no additional planting -- there is no
4 mitigation for additional plantings of elderberries.

5 BOARD MEMBER RIE: Okay.

6 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

7 Elderberries that are there now, they'll be protected
8 in place. They're on the existing levee, mile 3.9.
9 Levee mile.

10 BOARD MEMBER RIE: Is that an area where we're
11 experiencing erosion?

12 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

13 It's a little outside of the actual critical part of
14 the erosion, but it's -- the setback levee will be
15 outside of those elderberries.

16 BOARD MEMBER RIE: Okay. So are we avoiding
17 the elderberries?

18 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

19 We're avoiding the elderberries. These setback levees,
20 that's one of the requirements is to avoid sensitive
21 habitat.

22 BOARD MEMBER RIE: Okay. And where the
23 notches are going to be placed in the existing levee at
24 the setback levee locations: Did the mitigated neg dec
25 look at stagnant water impacts and algae and odors and

1 that sort of thing?

2 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

3 On the landside.

4 BOARD MEMBER RIE: Yeah.

5 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

6 Between the existing and setback levee.

7 BOARD MEMBER RIE: Yeah. Did you guys look at
8 that? How you're going to mitigate for that?

9 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

10 We did not look at that.

11 BOARD MEMBER RIE: Okay.

12 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

13 I'm not sure how to mitigate for that.

14 BOARD MEMBER RIE: Because you're going to
15 have an area between the existing levee and the new
16 setback levee where there is going to be water ponding.
17 How is that water going to get out?

18 SECRETARY DOHERTY: The notch.

19 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

20 There is the notch.

21 WATER RESOURCES PROJECT MANAGER WHEELDON:

22 That's the point of the notch.

23 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

24 If there's an -- if it overflows the existing levee,
25 there will be the notch. There will be a break in the

1 old levee which will allow water to go back into the
2 river channel.

3 BOARD MEMBER RIE: So is the interior area
4 between the existing levee and new levee going to be
5 sloped so it drains?

6 WATER RESOURCES PROJECT MANAGER WHEELDON: No.
7 There is no construction or any disturbance on the
8 interior portion. It's essentially flat.

9 BOARD MEMBER RIE: Well, if it's flat, once
10 the water gets in there, how do you get all the water
11 out so it doesn't pond and become stagnant?

12 WATER RESOURCES PROJECT MANAGER WHEELDON:
13 There's no provisions for that.

14 BOARD MEMBER RIE: Okay. So potentially,
15 there's going to be odors and stagnant water and
16 mosquitos?

17 WATER RESOURCES PROJECT MANAGER WHEELDON:
18 Well, if that internal area is being inundated, that
19 means that the whole portion of the levees are being
20 overtopped, and this is going to be common problem
21 throughout the whole inundation area.

22 BOARD MEMBER RIE: But the water needs to
23 drain back out.

24 WATER RESOURCES PROJECT MANAGER WHEELDON:
25 Yes.

1 BOARD MEMBER RIE: And you guys haven't
2 provided for that?

3 WATER RESOURCES PROJECT MANAGER WHEELDON:
4 Well, it will drain up until just the small, you know,
5 minor ponding that will be occurring throughout the
6 region.

7 BOARD MEMBER RIE: Have you guys looked at how
8 long that ponding is going to be there?

9 WATER RESOURCES PROJECT MANAGER WHEELDON: No.

10 BOARD MEMBER RIE: Okay. Thank you.

11 SECRETARY DOHERTY: I have a question.

12 On the other side of I-5, there was a setback
13 along Cache Creek put in. And if I remember correctly,
14 they said that wasn't going to be a permanent fix. It
15 might last ten or 15 years.

16 What's the life span of these setbacks?

17 WATER RESOURCES PROJECT MANAGER WHEELDON: The
18 life span of these setbacks are 50 years, and that's
19 based on the offset distance from the original levee.

20 And that's a 50-year rate of erosion of the
21 eroding bank until it gets to that point of the toe of
22 the new levee; so in that aspect, it's a temporary fix
23 with an approximated 50-year life span.

24 We've also identified a lot of these as --
25 these repairs, even the Sac Bank and stream repairs, as

1 temporary fixes because, especially in the Cache Creek
2 system, a regional solution is really needed.

3 And that's being looked at right now by the
4 Army Corps and by SAFCA -- or west SAFCA -- to do a
5 regional solution, a major setback or some other change
6 in the system.

7 These setback levees that we're constructing
8 and then the in-stream bank repairs are considered
9 temporary fixes because the life span is 50 years for
10 these setback levees and even less for our in-stream
11 repairs.

12 SECRETARY DOHERTY: Could you briefly explain
13 to me how the capacity has been reduced if the channel
14 has deepened considerably -- it's down 36 feet or
15 something -- and if it's gone down deeper, it seems to
16 me it's carrying even more than it did in the previous
17 years.

18 WATER RESOURCES PROJECT MANAGER WHEELDON:
19 That is true. But still, current hydrologic analysis
20 shows that the 31,000 feet is the ten-year, essentially
21 the ten-year protection which equates to 31,000 cfs.
22 That's the flow with which the water level reaches
23 three feet of freeboard on the levee.

24 SECRETARY DOHERTY: And that's what it was
25 designed for, right?

1 WATER RESOURCES PROJECT MANAGER WHEELDON: I'm
2 not exactly sure --

3 SECRETARY DOHERTY: Or that's a natural
4 meandering creek?

5 WATER RESOURCES PROJECT MANAGER WHEELDON: No,
6 no. It's a line established channel.

7 And I'm not sure what it was designed for, but
8 it has been increased due to that undercutting of the
9 base. But the current conditions are the 31,000 feet
10 is the capacity or the design capacity of those levees.

11 SECRETARY DOHERTY: Thank you.

12 BOARD MEMBER RIE: While you're here, can I
13 ask you a question?

14 CHIEF INAMINE: Could I follow up on that?
15 Because there seems to be a little bit of confusion and
16 this gets back to -- I'm Mike Inamine, Chief of the
17 Levee Repairs and Floodplain Management Office.

18 With respect to your question about
19 down-cutting, certainly that does provide some
20 incremental additional capacity.

21 The larger issue with this is that when you
22 get this undercutting and it starts encroaching on the
23 prism of the levee, it starts -- the berm and the levee
24 itself start chunking off. I mean it creates a very
25 unstable situation, so we end up losing the levee. So

1 it's as much a stability issue as it is capacity.

2 And there was some earlier question I think
3 John, Mr. Brown, had raised about why you couldn't
4 just, you know, take out the other side, and that gets
5 to that stability issue.

6 In order to stabilize the slope on the left
7 bank, you need to put a -- buttress the slope, put rock
8 in the channel that encroaches on the prism of the
9 section, that encroaches on the section that carries
10 water through the channel.

11 That's why you need additional capacity
12 somewhere in that channel, and the only away you can do
13 that is to take it out of the right bank. That's why
14 all the ensuing loss of vegetation has to take place
15 before you can restore the channel.

16 So I just wanted to clarify that point.

17 PRESIDENT CARTER: Mr. Hodgkins?

18 VICE-PRESIDENT HODGKINS: Mike, following up
19 on John Brown's question, as I sit here, I'm not sure
20 why -- if you widen the channel on the right side and
21 planted a larger section and reduced the velocity,
22 could you in effect stop the erosion?

23 CHIEF INAMINE: No. Because what happens --
24 in a word, no. Respectfully, no.

25 The reason is because the -- you're going to

1 continue -- we did some geomorphologic studies in the
2 channel, and you're continue to encroach -- because the
3 bank is so unstable, you're still going to encroach on
4 that left bank. It's going to continue to erode, even
5 at lower levels. So it will continue to erode and make
6 that levee unstable.

7 VICE-PRESIDENT HODGKINS: Okay.

8 PRESIDENT CARTER: Mr. Inamine, to what extent
9 is the in-channel vegetation contributing to river or
10 stream meander and erosion and pressure on the levees?

11 CHIEF INAMINE: I'm going to -- we have
12 done -- our flood maintenance shop under Keith Swanson
13 has done some hydraulic studies, and I'll speak to
14 these as best as I can.

15 Because there has been a lot of concern about
16 the vegetation in the channel, its effects on the
17 hydraulics of the channel, and, you know, everybody who
18 lives on the system says, well, you know, just take the
19 vegetation out and all of your problems will be solved.

20 It's not quite that simple because, at least
21 the hydraulic studies that I'm aware of -- and I'm only
22 peripherally aware of these studies that our flood
23 maintenance shop has done -- show that in fact it does
24 not make a -- even though you see a lot of vegetation
25 in the channel, the fact is it does not make a big

1 hydraulic difference in the hydraulics of the channel
2 in terms of performance.

3 So I know that has been looked at, and it's
4 not a major contributor to that.

5 BOARD MEMBER BROWN: I have a question for
6 Mike, Mr. Chairman.

7 Mike, on the figure 4, it looks like the
8 setback channel is right up to the edge of the shop
9 there. Is there room for the farmer to drive around
10 his shop or her shop at that corner? That's one
11 question.

12 And then the other one: It looks like it puts
13 that shop in a very precarious position there with the
14 setback levee and stream channel right up next to the
15 corner edge of it. What's the chance of those folks
16 losing their shop some day?

17 CHIEF INAMINE: That was a very lengthy
18 discussion with the landowner with regard to access to
19 the shop because this proximity to the levee, the use
20 of that shop as a rental property for heavy equipment
21 and access.

22 And so the reason for that retaining wall was
23 to allow the landowner to make full use of that
24 property. So that was a consideration.

25 As far as the levee section, itself it's a

1 very -- it's a robust engineered section. It's going
2 to be one of the -- even with the retaining wall, it's
3 going to be, you know, probably the best piece of levee
4 on the system.

5 So the shop is in no immediate danger from
6 anything. I mean, if that shop is in danger of
7 erosion, the whole creek is probably gone at that
8 point.

9 BOARD MEMBER BROWN: Are they able to drive
10 around the shop with equipment on that corner?

11 CHIEF INAMINE: It's -- they can -- they will
12 not be able to drive between -- obviously, they won't
13 be able to drive heavy equipment between the retaining
14 wall and the shop. They'll have to move back into the
15 shop. And that was one of the issues that we went
16 through with the landowner.

17 BOARD MEMBER BROWN: Are there doors on that
18 end?

19 CHIEF INAMINE: I believe they're on both
20 sides. So the issue that the landowner had, I believe,
21 was the ability to drive between the shop and the
22 levee, as you pointed out.

23 BOARD MEMBER BROWN: So they're unable to do
24 that with this design?

25 CHIEF INAMINE: That's correct. That's

1 correct.

2 WATER RESOURCES PROJECT MANAGER WHEELDON: I
3 think the width is ten or 12 feet, so --

4 CHIEF INAMINE: It's --

5 WATER RESOURCES PROJECT MANAGER WHEELDON: --
6 vehicles but not, you know, heavy equipment.

7 BOARD MEMBER BROWN: Okay. Thank you.

8 CHIEF INAMINE: The other point, to clarify,
9 is that FloodSAFE Yolo and Department of Water
10 Resources and the Army Corps of Engineers are the three
11 groups that are working collaboratively to come up with
12 a long-term solution.

13 As Dave pointed out, all of the repairs
14 including, the three setback levees that were done two
15 years ago, they all are under Sac Bank so they all have
16 50-year design lives. Fifty years, five-zero.

17 We have been characterizing these as
18 nonstrategic repairs in recognition of the fact that
19 because of this geomorphology, the hydrology, this
20 down-cutting, everybody recognizes that there needs to
21 be a long-term regional solution.

22 So those three groups, FloodSAFE Yolo,
23 Department of Water Resources, and the Corps, are
24 working on that long-term solution. But we have to do
25 these in the interim to keep the system operating and

1 keep -- and to stop these near-term effects.

2 PRESIDENT CARTER: Mr. Inamine, just to
3 comment, I heard your answer with regard to my question
4 and the impacts that are effects of the in-stream
5 vegetation.

6 It's just -- I keep thinking about it, and
7 it's hard for me to believe that, given the pictures
8 that were shown today of the size and the amount of
9 vegetation that's inside that stream, and knowing the
10 geography or topography and the high velocities and the
11 amount of fall that's in this section of Cache Creek,
12 that it does not have a hydraulic effect.

13 I'd be really interested to see that model and
14 find out if it's actually been ground-truthed.

15 CHIEF INAMINE: Yeah. It is tough to -- you
16 know, when I first saw the channel -- anybody. The
17 casual observer who looks at that channel, sees all
18 that vegetation.

19 But the fact is, under high flows, all that
20 stuff lays down. And you get -- you certainly do get a
21 hydraulic effect. It's not significant, according to
22 the analysis.

23 Your point is well taken.

24 PRESIDENT CARTER: Thank you. Let's go ahead
25 and proceed please.

1 COUNSEL FINCH: Okay. I think I'm going to be
2 the next speaker.

3 PRESIDENT CARTER: Okay.

4 COUNSEL FINCH: And I'm going to kind of focus
5 your attention on the Resolution of Necessity itself
6 and --

7 PRESIDENT CARTER: Nancy, would you introduce
8 yourself just for the record please?

9 COUNSEL FINCH: Certainly. Nancy Finch,
10 counsel to the Board.

11 PRESIDENT CARTER: Thank you.

12 COUNSEL FINCH: First I'd like to give a
13 little general background of the Resolution of
14 Necessity, and then I'll move into the four findings.

15 First, I'd like to mention that today is a
16 public hearing, a component of review of the project,
17 all the resolutions involved today, so the public does
18 have an opportunity to comment on the project, on the
19 resolutions, on the CEQA compliance.

20 And a Resolution of Necessity is part of the
21 process used to acquire property for a public use.
22 It's used when attempts to acquire the property by
23 other means is not being successful, and usually that's
24 negotiations.

25 And it doesn't necessarily mean that

1 negotiations have broken down completely. It can be
2 because negotiations are ongoing, and yet there's a
3 time line that needs to be met or some sort of
4 certainty needed that the Resolution of Necessity
5 helps.

6 And in fact, even if you do vote to proceed
7 with the eminent domain process through the Resolution
8 of Necessity, negotiations will -- can and will be
9 ongoing with the landowners.

10 And in fact, even after an eminent domain
11 action is filed, negotiations can continue. And if the
12 property is acquired through negotiations, then the
13 parties file something with the courts and dismiss the
14 eminent domain proceeding.

15 So the Resolution of Necessity allows a public
16 agency to exercise its power of eminent domain, so it's
17 a mechanism to begin that process.

18 And so for the public agency to invoke its
19 power of eminent domain, the Resolution of Necessity
20 requires the decision-making body, which is you guys
21 here today, to find and determine each of the points
22 listed up there on that slide and I think you have in
23 front of you.

24 And so the first one is that public interest
25 and necessity require the property of the project, of

1 the proposed project.

2 And then the second point is the proposed
3 project is planned or located in a manner most
4 compatible with both the greatest public good and the
5 least private injury, and that has been considered.

6 And the next finding and determination that
7 the Board must make is that the property sought is
8 necessary for the proposed project.

9 Then the last determination that the Board
10 must make is that the offer required by the Government
11 Code has been made to the owner.

12 So today, those are the four -- they will be
13 called "findings" or "determinations" but they are the
14 four elements that the Board must feel have been met in
15 order to proceed with the Resolution of Necessity.

16 It's that basic at this point. Then that will
17 trigger an eminent domain process.

18 So to assist you on -- if there aren't any
19 questions about the process, the next step will be that
20 Dave Wheeldon will come back, as will Paul Farris of
21 Real Estate, and go through the different elements and
22 describe what has been done to assist you in your task.

23 PRESIDENT CARTER: Any questions of Ms. Finch?

24 BOARD MEMBER RIE: Yes.

25 Do we need to approve the project before we

1 approve a Resolution of Necessity?

2 COUNSEL FINCH: Today the process will be to
3 approve the mitigated neg dec and approve the project,
4 and then we will move on to the Resolutions of
5 Necessity.

6 BOARD MEMBER RIE: Okay.

7 COUNSEL FINCH: Because if you don't approve
8 the project, we won't make it to the eminent domain
9 proceeding.

10 BOARD MEMBER RIE: Okay.

11 PRESIDENT CARTER: Very good. Mr. Wheeldon.

12 WATER RESOURCES PROJECT MANAGER WHEELDON:
13 Thank you, Nancy. Again, my name is Dave Wheeldon,
14 Department of Water Resources, Levee Repairs Branch.

15 As Nancy mentioned, the first part of the
16 presentation today, we described the background of the
17 project, and then Nancy introduced the requirements for
18 the Resolution of Necessity.

19 And I'll be bringing a lot of that information
20 that I presented at the beginning into the background
21 information that supports each of the first three
22 resolutions, and then Paul Farris will be discussing
23 the information regarding -- related to the fourth
24 requirement.

25 So the first requirement: Public interest and

1 necessity require the project.

2 The Cache Creek levee mile 3.9 and 4.2 have
3 been identified as critical sites in need of immediate
4 repair by our US Army Corps of Engineers and by the
5 Governor's declaration of flood emergency. As I
6 mentioned, these are the last two sites of 104 that
7 were identified in that declaration that have not been
8 repaired.

9 The Cache Creek system, as I described in the
10 background portion, has a significant history of
11 flooding and levee overtopping. The setback levees are
12 required to accommodate these commonly occurring flows.
13 Maybe not commonly, but occurring flows.

14 The inundation area of a levee failure:
15 Either of the setback locations would inundate houses,
16 numerous houses, public roads, school buildings, and
17 significant agricultural and farming operations.

18 Levee failures and breaches result in
19 floodfighting activities. And in the past, overtopping
20 at several lotions would have resulted in failures if
21 DWR did not engage in aggressive floodfighting
22 operations.

23 Requirement two: The project is planned or
24 located in a manner that will be most compatible with
25 the greatest public good and the least private injury.

1 The designs of these two setback levees have
2 been modified to accommodate and benefit the affected
3 landowners. As I mentioned, splitting the setback, the
4 single preferred setback, into two distinct setback
5 reaches to minimize the impacted land area.

6 We have reduced the length of the setback
7 levee at levee mile 4.2 to protect the stand of trees,
8 and also at that same site the retaining wall to allow
9 continued use of the shop.

10 By selecting the setback alternative and
11 voiding any construction in the river channel and
12 riparian habitat area, this almost completely removes
13 the significant environmental impacts associated with
14 that in-stream repair.

15 The cost savings associated with the
16 constructing the setback levees versus the in-stream
17 alternative, as I mentioned, approximately \$2 million.

18 And the setback alternative offers a more
19 robust design, a longer life expectancy, and provides
20 longer duration of protection from erosion.

21 BOARD MEMBER BROWN: Have the landowners
22 proposed an alternative design? Is that the
23 difference? Or is the difference just in the
24 compensation?

25 WATER RESOURCES PROJECT MANAGER WHEELDON:

1 The --

2 BOARD MEMBER BROWN: The differences that we
3 have or you have with the landowners: Is it within the
4 design itself, or is it with the amount of
5 compensation?

6 WATER RESOURCES PROJECT MANAGER WHEELDON: I
7 am pretty sure it's the amount of compensation. Paul,
8 is that an accurate statement?

9 BRANCH CHIEF FARRIS: I believe so, yes.

10 WATER RESOURCES PROJECT MANAGER WHEELDON:
11 Okay.

12 BOARD MEMBER BROWN: So they are satisfied
13 with the design; it's the compensation that's in
14 debate?

15 WATER RESOURCES PROJECT MANAGER WHEELDON: I
16 think so, yeah.

17 BOARD MEMBER RIE: Does this project require
18 408 approval?

19 WATER RESOURCES PROJECT MANAGER WHEELDON: I'm
20 not exactly sure. No.

21 BOARD MEMBER BROWN: What was the question?

22 BOARD MEMBER RIE: Does the project require
23 408 approval from the Corps?

24 WATER RESOURCES PROJECT MANAGER WHEELDON: As
25 part of the Sac Bank program which is under the Corps'

1 authority, which these two projects are, it does not
2 require that 408 because it's a Corps-authorized
3 project.

4 BOARD MEMBER RIE: Okay.

5 WATER RESOURCES PROJECT MANAGER WHEELDON: The
6 third requirement: The property sought to be acquired
7 is necessary for the project.

8 The distance from the existing river bank to
9 the proposed location of the setback levee is based on
10 a 50-year rate of erosion which is the Army Corps
11 requirement for setback levee design. So that's based
12 on the offset distance from the river channel, or the
13 river bank, to the toe of the new levee.

14 The setback levee geometry, the crest width,
15 the embankment slopes, the levee height, conforms to
16 the minimum Army Corps levee design standards.

17 The alignment of the proposed setback levee
18 was designed to minimize land impacts, as we mentioned.

19 And the project obviously cannot proceed
20 without the acquisition of the appropriate interest in
21 real property from the owners.

22 BOARD MEMBER RIE: Question. You said this
23 meets the Corps' standards. Is the Corps okay with
24 that retaining wall on the levee?

25 WATER RESOURCES PROJECT MANAGER WHEELDON:

1 Yeah. The Corps has reviewed the designs.

2 BOARD MEMBER RIE: Okay.

3 WATER RESOURCES PROJECT MANAGER WHEELDON: So
4 at this point, I'll hand it over to Paul Farris, who is
5 the Chief of the Real Estate Branch for the Department
6 of Water Resources, to discuss the background and
7 supporting information for requirement number four of
8 the resolution.

9 BRANCH CHIEF FARRIS: President Carter,
10 Members of the Board, Mr. Punia, staff members. Good
11 morning. My name is Paul Farris. I'm the Chief of the
12 Real Estate Branch.

13 This is the first time I've addressed the
14 Board since becoming the Chief of the Real Estate
15 Branch; so not only is this a special day for me, I'm
16 honored to represent the Real Estate Branch and the
17 Department as a whole.

18 In preparing my thoughts for this
19 presentation, it occurred to me that we have not
20 brought a Resolution of Necessity to this Board or a
21 preceding Board for well over ten years.

22 I believe the two primary factors for that
23 are, number one, the professionalism and the fairness
24 that the Department provides in our negotiation process
25 with the property owners; and secondly, we're now

1 entering an era where the more elaborate landside
2 designs are being considered and selected, landside
3 stability berms, slabs, setback levees. And we fully
4 recognize that these are very intrusive to individual
5 property owners and their property owner rights.

6 I can assure you that the Department fully
7 recognizes the significance and the seriousness of
8 obtaining real property rights, and we will do
9 everything to continue working in a very professional
10 manner.

11 This morning I -- this is my proposed agenda.
12 I'd like to give you an opportunity to get to know us a
13 little bit, review our organizational structure, our
14 role and responsibilities.

15 Secondly, provide you with a summary of our
16 demonstration that we completed the fourth finding
17 under 1245.23.

18 Secondly -- or thirdly, I'd like to go back
19 and give you a step-by-step process, looking at the
20 project development process and land acquisition
21 process, how we came to complete our obligation under
22 1245.

23 And then the lastly, we'll open it up for
24 questions.

25 The Real Estate Branch is organizationally

1 structured under the Division of Engineering. The
2 branch consists of thirty very-hard-working men and
3 women. We have four disciplines: Appraisals,
4 acquisitions, property management, encroachment permits
5 and appraisals.

6 Our Division Chief is Mr. Richard Sanchez. We
7 report ultimately to the Department Director for the
8 State Water Project, Mr. Ralph Torres.

9 The Real Estate Branch is responsible to
10 provide the real estate services to support your
11 Board-sanctioned projects. We are your agents in the
12 acquisition of real property rights, again, for the
13 projects that have been designed and approved by your
14 Board.

15 Ultimately, our responsibility is to provide
16 real estate certification to go to construction. That
17 is our main goal, is to get to construction.

18 We're here today because unfortunately or
19 as -- although we have negotiated in good faith, we
20 have come to an impasse; and unfortunately, we are here
21 to seek adoption of Resolutions of Necessity to support
22 the project.

23 As Mr. Wheeldon and Mr. Inamine have already
24 indicated, the program people and the design folks,
25 they're primarily responsible for demonstrating the

1 satisfaction of the first three findings.

2 The Real Estate Branch is the sole responsible
3 party to satisfy the fourth finding which in summation
4 says that an offer containing just compensation was
5 made to the owner of record.

6 This graph demonstrates that on -- the far
7 right-hand corner -- that offers were made to all four
8 property owners on November 6, 2007.

9 I'd like to take the opportunity at this time
10 to highlight the fact that we have successfully reached
11 a settlement with Klein Farms, and that Resolution of
12 Necessity is no longer before you this afternoon.

13 I think it would be appropriate too to mention
14 that Mrs. Cathy Klein and her legal representative,
15 Corey Wong, are here too in the audience.

16 Now, I'd like to go back and give you a more
17 step-by-step process in how we came to this point
18 today, focusing on the project development and the land
19 acquisition process.

20 For today's discussion, we're looking at three
21 basic phases of the project development phases. There
22 are others, but for today's demonstration, I'd like to
23 focus on these three.

24 The US Army Corps of Engineers identified the
25 Cache Creek 3.9 and 4.2 repair sites as emergency

1 repair sites. Under the Governor's declaration and
2 subsequent executive orders, authorization to proceed
3 with the design and construction were provided to the
4 Department.

5 It was determined that the best program to fit
6 these repair sites under was the Sacramento Bank
7 Protection Program.

8 In the preliminary design phase, as
9 Mr. Wheeldon has already indicated, both the in-stream
10 repair alternative was considered and also the setback
11 levee alternative was considered. In the final design
12 phase, the selected design alternative is then selected
13 and designed.

14 The most important part for the Real Estate
15 Branch in the design alternative stage is it creates
16 the real estate requirements, and that begins the land
17 acquisition process for us at that point.

18 I would like to highlight here, if I may, that
19 this is one of the -- these two sites were two of
20 about, I think, 12 that the division of engineering
21 designed and will be responsible for the construction
22 of.

23 Typically, the Sac Bank program is designed
24 and constructed under the US Army Corps of Engineers
25 construction group and design groups.

1 Land acquisition process for today. We are
2 looking at four steps: Generation of real estate
3 requirements, the appraisal, written offer, and
4 negotiation.

5 At the real estate requirements phase, as I
6 already indicated, the area of calculation, the area of
7 the acquisitions, is determined or predicated based on
8 the final design.

9 Secondly, the most important thing in the real
10 estate requirements is the property interests to be
11 required are determined. In this case, we are
12 acquiring levee, utility, county road, and temporary
13 construction easements.

14 This map shows the -- all four parcels and the
15 real estate -- well, the design of the footprint, which
16 in essence are the real estate requirements.

17 This is a slide of assessor parcel map for
18 Margrit Boyd, parcel 13668. Her total parcel is 20.82
19 acres. This aerial photography shows that the area
20 highlighted in yellow is 1.97 acres collectively for
21 levee easement and .9 acres for temporary construction
22 easement.

23 Secondly, Mrs. Boyd's second parcel, 13669.
24 Her larger parcel is -- or her whole parcel is 3.58
25 acres. The area of the acquisition is .06 acres of

1 levee easement. And it's kind of hard to see. It's
2 down on the right-hand corner there.

3 Lastly, John and Catherine Klein, parcel
4 13673. Their larger parcel is 14 acres. Real estate
5 requirements are .67 acres levee easement, .11 acres
6 utility easement.

7 The next step of the land acquisition process
8 is the appraisal. Just compensation -- or just
9 compensation is determined by fair market value of
10 appraisal.

11 It may be interesting to note that both the US
12 Constitution and the California Constitution require
13 that just compensation be paid by a public entity when
14 acquisition of real property is acquired.

15 Notice of letters to appraise were sent to the
16 property owners. Owners were invited to accompany the
17 appraiser. The appraiser physically inspects the
18 subject and the comparable sales.

19 Most importantly in my opinion in the
20 appraisal process, the appraiser then does a
21 highest-and-best-use analysis to determine the highest
22 price or the highest just compensation we could offer.

23 The appraiser also during his analysis or
24 development of his report looks at both the sales
25 comparison, income, and cost analysis or approaches to

1 value. And in this case, the sales comparison approach
2 was used on all of our parcels.

3 Then the appraisal report is produced.

4 I would also like to take a little deviation
5 here. Appraisals here at DWR, under our authority,
6 anything under \$5,000 I can approve at the Branch Chief
7 level. Anything above up to \$150,000 requires review
8 and approval from our control agency, the Department of
9 General Services, in addition to Mr. Sanchez's
10 signature.

11 Land acquisition process then goes into the
12 written offer phase.

13 SECRETARY DOHERTY: Pardon me. Can I
14 interrupt you a moment?

15 BRANCH CHIEF FARRIS: Yes, ma'am.

16 SECRETARY DOHERTY: You had the appraisals. I
17 thought that the individual could acquire their own or
18 hire someone to appraise for them also.

19 BRANCH CHIEF FARRIS: That is correct.

20 SECRETARY DOHERTY: And that the Department
21 would pay for their fees?

22 BRANCH CHIEF FARRIS: Yes, ma'am. That is
23 correct.

24 SECRETARY DOHERTY: All right. So do people
25 ordinarily get their own appraiser, or are you the only

1 one that does the appraisal?

2 BRANCH CHIEF FARRIS: It's a fairly new
3 statute, I think about a year old. And I would -- I --
4 just rough calculations, about half the acquisitions we
5 deal with, the landowners do have their own appraisal
6 conducted, yes.

7 SECRETARY DOHERTY: Thank you.

8 BOARD MEMBER BROWN: Isn't part of the
9 argument or debate here where the landowner, they get
10 their own appraisal and it's reimbursement?

11 BRANCH CHIEF FARRIS: That is an issue. Yes,
12 sir.

13 BOARD MEMBER BROWN: What was the problem
14 there?

15 COUNSEL FINCH: I'd like to address that, just
16 to let you know that the legal office is working with
17 the Real Estate Branch to resolve this and get that
18 paid out as quickly as possible.

19 BOARD MEMBER BROWN: Okay.

20 BRANCH CHIEF FARRIS: Our first written offer
21 package contains a cover letter to the property owner;
22 Appraisal summary statement, which the just
23 compensation is obviously the most important component
24 of it;

25 A right-of-way contract that spells out the

1 terms and conditions for both parties in the
2 acquisition;

3 A map and deed, which are created by our
4 sister branch, the geodetic branch, also a part of the
5 Division of Engineering;

6 Comparable sales data sheets and comparable
7 sales map. We give the property owner the information
8 that we use in the generation of our just compensation.

9 BOARD MEMBER RIE: I have a question.

10 You said that the appraisal basically looks at
11 the land value. What about the loss of use or the
12 impact to their business? Do you look at that? Is
13 that included in the price?

14 BRANCH CHIEF FARRIS: Yes, ma'am; sure, yes.
15 I don't think these -- there are -- there aren't any
16 businesses in this situation.

17 BOARD MEMBER RIE: What is the land used for
18 now?

19 BRANCH CHIEF FARRIS: Well, we appraised the
20 highest and best use for the three parcels that are
21 significant along the creek as rural home sites. Klein
22 Farms was appraised as agriculture.

23 BOARD MEMBER RIE: So do you look at the loss
24 of agricultural use when you determine the price?

25 BRANCH CHIEF FARRIS: Yes.

1 BOARD MEMBER RIE: And did you in this
2 particular case or --

3 BRANCH CHIEF FARRIS: Yes.

4 BOARD MEMBER RIE: Okay.

5 SECRETARY DOHERTY: Also, do you value the
6 loss of privacy for the individuals? And do you value
7 that land as partly more valuable because you're going
8 to be able to use it in the floodway?

9 BRANCH CHIEF FARRIS: I don't think I clearly
10 understand your question, ma'am.

11 SECRETARY DOHERTY: In other words, let's say
12 that this piece of land is worth \$10; but if I can use
13 it to help prevent floods over here, it's probably
14 going to be worth \$50 to me.

15 BRANCH CHIEF FARRIS: That is not considered
16 as part of the just compensation.

17 SECRETARY DOHERTY: That's what I wanted to
18 know.

19 BRANCH CHIEF FARRIS: Nor is the inconvenience
20 of the project to the property owner.

21 SECRETARY DOHERTY: Okay.

22 BOARD MEMBER RIE: And what about changes to
23 zoning? Do you factor that into the price?

24 BRANCH CHIEF FARRIS: The highest and best use
25 analysis looks at current zoning, and the valuation is

1 as of the date of value. We look at what the zoning is
2 on the date of value.

3 BOARD MEMBER RIE: So by taking a portion of
4 these properties, are you putting them in a position
5 where their zoning acreage is less than what's required
6 to build on?

7 BRANCH CHIEF FARRIS: Not to my knowledge, no.

8 BOARD MEMBER RIE: Okay.

9 BRANCH CHIEF FARRIS: Where was I? Cover
10 letter.

11 Next, the stage we're in now is negotiations.
12 And a settlement is either reached as proposed or
13 modified through negotiations.

14 In this case, we reached impasse, and we are
15 requesting the Board to adopt Resolutions of Necessity
16 to proceed to eminent domain.

17 Letters of intent, of the Department's intent
18 to proceed to eminent domain were mailed to the
19 property owners on December 10, 2008.

20 Any other questions?

21 PRESIDENT CARTER: Any questions for
22 Mr. Farris at this point? Thank you very much.

23 VICE-PRESIDENT HODGKINS: You're taking this
24 as easement?

25 BRANCH CHIEF FARRIS: Yes, sir.

1 VICE-PRESIDENT HODGKINS: And can you tell me,
2 in taking it as easement -- not the construction
3 easement, but the levee easement -- what percent of fee
4 do you value that at?

5 BRANCH CHIEF FARRIS: Somewhere between 90 and
6 99 percent.

7 VICE-PRESIDENT HODGKINS: Okay. Why not take
8 it in fee?

9 BRANCH CHIEF FARRIS: It's my understanding
10 that we -- part of the -- when acquiring property under
11 the threat of condemnation, we can only acquire the
12 minimal real property interest required to facilitate
13 the project.

14 An easement would be satisfactory to build the
15 levee. Fee is a greater interest to acquire.

16 VICE-PRESIDENT HODGKINS: Thank you.

17 SECRETARY DOHERTY: Was the land in the
18 Williamson Act, and was that affected?

19 BRANCH CHIEF FARRIS: I can't answer that
20 question off the top of my head.

21 ASSISTANT CHIEF COUNSEL TABOR: I'd like to
22 address both those, if I could. My name is Ward Tabor,
23 Assistant Chief Counsel for the Department of Water
24 Resources and over flood management and public safety
25 issues.

1 The question about whether or not Williamson
2 Act contract is affected: When the Board or any public
3 agency acquires a piece of property, either through
4 eminent domain or in lieu of eminent domain as we're
5 talking about here, the Williamson Act contract simply
6 goes away as a matter of law for that part of the
7 parcel.

8 So it's -- so the amount of acreage covered by
9 the contract is reduced because it's going to be
10 covered by the public facility.

11 SECRETARY DOHERTY: So they reach the minimum
12 that's required to remain in the Williamson Act.

13 ASSISTANT CHIEF COUNSEL TABOR: Correct. It
14 doesn't affect their part of the Williamson Act
15 contract at all.

16 The other previous question about acquisition
17 of fee versus in easement: One of the benefits to the
18 property owner for acquisition of an easement versus a
19 fee value, even at these kind of evaluation levels, is
20 that it keeps the property in private ownership; and it
21 allows the property owner, then, to prevent trespass on
22 the levee.

23 If it became a completely publicly owned
24 property, 100 percent owned by the State, the State
25 would be in a very difficult position to control public

1 access to that levee.

2 By keeping the fee ownership interest in the
3 property owner, it gives them the ability to be the
4 owner of that for the purpose of law enforcement in
5 keeping trespassers and other illegal users off that.

6 Other parts of the valley, it's an important
7 issue for landowners because it may affect their water
8 rights to have that adjacency to the water channel.

9 I don't think it's a factor in this case, but
10 it's a factor in many other areas within the valley
11 that the landowner, they don't want to lose that direct
12 connection to the waterway.

13 BOARD MEMBER BROWN: What about property
14 taxes?

15 ASSISTANT CHIEF COUNSEL TABOR: One thing that
16 the Department does on behalf of the Board, and it's
17 covered in the recently executed memorandum of
18 agreement, is the Department staff works with the
19 property owner and county to get the county to reassess
20 the value of that property so that the property owner's
21 taxable property is reduced based upon what is taken.

22 So there is a small impact here on the revenue
23 that may be collected because of the acquisition, but
24 the property owner can be helped out by this process by
25 reducing the amount of their property tax.

1 BOARD MEMBER BROWN: The property owner would
2 be paying the taxes on this?

3 ASSISTANT CHIEF COUNSEL TABOR: The property
4 owner would be paying taxes based upon their value. So
5 to the extent that their remaining fee value in the
6 easement is low, then they'll be paying less property
7 tax in the future than what they may be paying today.

8 Because they -- they're share of the ownership
9 of that property is reduced to a much smaller
10 percentage, from 100 percent to 5 or 1 percent, using
11 the numbers Mr. Farris used.

12 BOARD MEMBER BROWN: Thank you.

13 BOARD MEMBER RIE: If you acquire the property
14 in fee, doesn't that increase the value? Can you offer
15 them more money?

16 ASSISTANT CHIEF COUNSEL TABOR: It's a nominal
17 amount of money.

18 BOARD MEMBER RIE: But there is an increase?

19 ASSISTANT CHIEF COUNSEL TABOR: It's a very
20 slight increase in value.

21 BOARD MEMBER RIE: Okay. Thank you.

22 PRESIDENT CARTER: Mr. Farris, in the case of
23 the setback portion that involves the retaining wall
24 and the shop, what is the outline of the easement?
25 Does the shop footprint fall in the easement or is --

1 what -- give me an idea of where we are in that in
2 terms of where we draw the line.

3 BRANCH CHIEF FARRIS: Sure. Originally, I
4 believe the design footprint was impacting the shop.
5 The design consideration was made where the retaining
6 wall was put in, and the easement line stops at that
7 point.

8 PRESIDENT CARTER: So the State easement stops
9 at the retaining wall?

10 BRANCH CHIEF FARRIS: I believe so.

11 PRESIDENT CARTER: So we don't have any access
12 to the toe of the levee at the retaining wall?

13 BRANCH CHIEF FARRIS: Typically, our easements
14 are ten feet per Title 23. Or the toe plus ten feet.
15 I need to get back and look at that one. That's a very
16 valid question. I can't answer.

17 PRESIDENT CARTER: I ask that just from a
18 maintenance and access perspective. And also, if we
19 are encompassing a portion of the footprint of the
20 shop, what are the implications to the property owner
21 of that in terms of their interest in the shop building
22 and use of it and property taxes that they will pay on
23 that and value of that?

24 BRANCH CHIEF FARRIS: Okay. Can I break that
25 down a little bit.

1 (Laughter)

2 BRANCH CHIEF FARRIS: I believe, in thinking
3 about it up here, that the retaining wall -- I think
4 they're about 12 to 15 feet from the retaining wall to
5 the corner of the shop. So I will check and get back
6 with you, but I believe we would have the toe or the
7 retaining wall plus ten that would give us our
8 regulatory required ten feet.

9 The remaining -- the 15 feet there, or 12 to
10 15 feet provides for some access, but it does
11 definitely diminish the functional utility of that
12 third bay, and that is a consideration we're addressing
13 with the property owner.

14 PRESIDENT CARTER: Okay.

15 SECRETARY DOHERTY: So that it's possible you
16 would have to help with restructuring the barn so that
17 it could be moved or perhaps this end taken apart and
18 placed on the other end?

19 BRANCH CHIEF FARRIS: Yes, ma'am. The barn is
20 being considered as a physical damage as a result of
21 the project and we are -- it is being considered.

22 BOARD MEMBER BROWN: Is the landowner
23 interested in relocating the shop?

24 BRANCH CHIEF FARRIS: Not to my attention.

25 BOARD MEMBER RIE: Question about the trees.

1 The trees at County Road 99A, what kind of trees are
2 those?

3 BRANCH CHIEF FARRIS: Which parcel is that?

4 PRESIDENT CARTER: Are you talking about the
5 orchard?

6 BOARD MEMBER RIE: Right here.

7 PRESIDENT CARTER: Those are walnuts.

8 BOARD MEMBER RIE: Are you compensating the
9 property owner for the loss of the walnut trees and the
10 loss of income?

11 BRANCH CHIEF FARRIS: We are in negotiations
12 with the property owner considering the highest and
13 best use of that property.

14 BOARD MEMBER RIE: Was that a yes?

15 (Laughter)

16 BRANCH CHIEF FARRIS: We look at all factors
17 to make sure that just compensation is fair to all
18 parties.

19 BOARD MEMBER RIE: Would that be normally
20 something you do when you determine the land value?

21 BRANCH CHIEF FARRIS: Yes, ma'am.

22 As I indicated, to me, and to the Real Estate
23 Branch, the highest-and-best-use analysis of the
24 property is the basic foundation of the appraisal
25 process. We spend a lot of time in that step before we

1 move forward.

2 PRESIDENT CARTER: Any other questions for
3 Mr. Farris?

4 SECRETARY DOHERTY: What's the time line in
5 your discussion with the property owners?

6 BRANCH CHIEF FARRIS: I wish it was today,
7 but . . . Negotiations are continuing, ma'am.

8 PRESIDENT CARTER: Questions?

9 BRANCH CHIEF FARRIS: Thank you. The first
10 offers were made November 7th of 2007, so we have been
11 talking.

12 PRESIDENT CARTER: Okay. Very good. Thank
13 you.

14 BRANCH CHIEF FARRIS: Thank you.

15 PRESIDENT CARTER: Who is next? Mr. Young or
16 Mr. Wheeldon?

17 WATER RESOURCES PROJECT MANAGER WHEELDON: I
18 think Kip is going to present --

19 COUNSEL FINCH: If you would like to move on
20 and have discussion after -- for each resolution so we
21 can move on to the mitigated neg dec and approval of
22 the project and have discussion for that specific
23 portion of this item? And so it would be Kip Young.

24 PRESIDENT CARTER: So we're going to talk
25 about the Mitigated Negative Declaration, the

1 environmental documentation, and approval of the
2 project, correct?

3 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:
4 Yes.

5 PRESIDENT CARTER: And then we'll go into the
6 individual Resolutions of Necessity.

7 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:
8 Yes.

9 PRESIDENT CARTER: Thank you.

10 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:
11 (Reading:)

12 Now, therefore, be it resolved, that the
13 Central Valley Flood Protection Board,
14 acting in its own capacity as the CEQA
15 Lead Agency, one, adopts the Findings,
16 Mitigation Measures, Mitigated Neg Dec
17 for Cache Creek North Levee Setback
18 Project Critical Erosion Sites levee
19 mile 3.9 and levee mile 4.2; two,
20 approves the Cache Creek North Levee
21 Setback Project Critical Erosion Site
22 levee mile 3.9 and levee mile 4.2

23 That's it.

24 PRESIDENT CARTER: So that's the
25 recommendation of staff --

1 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

2 Yes.

3 PRESIDENT CARTER: -- to adopt Resolution

4 09-01.

5 BOARD MEMBER BROWN: Is that second paragraph,

6 is that a typo or corrected correctly on that

7 Resolution: Whereas on December 16, 1988, Central

8 Valley Flood Protection Board?

9 PRESIDENT CARTER: I believe this project came
10 before the Board and was approved in an earlier form
11 and because of the change in the nature of the project
12 is back before the Board; is that correct?

13 BOARD MEMBER BROWN: That was the Reclamation
14 Board that it came before?

15 PRESIDENT CARTER: Yes. At that time, it
16 was -- we were called the Reclamation Board.

17 BOARD MEMBER BROWN: I just wonder if we ought
18 to have that in the resolution.

19 PRESIDENT CARTER: Valid question.

20 Discussion? Motions?

21 BOARD MEMBER RIE: I have a couple more
22 questions on the project.

23 PRESIDENT CARTER: Okay.

24 BOARD MEMBER RIE: I'm just wondering if the
25 cost of removing the elderberry clusters was so high

1 and that was the main reason why we had to go to the
2 setback levee?

3 WATER RESOURCES PROJECT MANAGER WHEELDON:

4 Dave Wheeldon, DWR, Levee Repairs.

5 The major difference that is shown between the
6 cost of the in-stream versus the setback is not
7 associated with the -- or not really the mitigation
8 costs. It's more just the construction costs, the
9 increased cost of material.

10 BOARD MEMBER RIE: Right. But I'm just
11 wondering if it would have been an option to remove all
12 the elderberry clusters and just put riprap along that
13 bank rather than go with the setback levee.

14 WATER RESOURCES PROJECT MANAGER WHEELDON:

15 That was part of the alternatives analysis where that
16 would have been looked at for the in-stream repair.

17 BOARD MEMBER RIE: Was the cost of that so
18 high that that was one of the main factors?

19 WATER RESOURCES PROJECT MANAGER WHEELDON: Of
20 the replace mitigation?

21 BOARD MEMBER RIE: No. To go with the setback
22 levee.

23 WATER RESOURCES PROJECT MANAGER WHEELDON: The
24 construction costs.

25 BOARD MEMBER RIE: Construction costs of

1 removing the elderberry clusters.

2 WATER RESOURCES PROJECT MANAGER WHEELDON: Oh.

3 It was factored in, yes.

4 BOARD MEMBER RIE: Was that a major factor?

5 WATER RESOURCES PROJECT MANAGER WHEELDON: No.

6 BRANCH CHIEF SANDHU: My name is Pal Sandhu.

7 I'm Chief of the Levee Repairs Project.

8 In this project, in the in-stream alternative
9 we weren't removing elderberry bushes, so there's no
10 mitigation for elderberry bushes.

11 The main mitigation cost is, according to DFC
12 and Fish and Wildlife Service, because of the trees,
13 when we go into in-stream alternative, there are oak
14 trees, historical oak trees in this area, and we were
15 impacting those trees.

16 That becomes also a major portion of
17 mitigation, and also aesthetic values of the channel.
18 That's a major environmental loss.

19 If we take all that area on the left bank and
20 also on the right bank, the property owners in that
21 area will not be able to see any tree in that area for
22 the next ten years. That was a major impact on the
23 area.

24 BOARD MEMBER RIE: Okay. My next question is:
25 How are you going to prevent erosion at the notches?

1 BRANCH CHIEF SANDHU: Because we are providing
2 expanded area with setback where the notches -- the
3 area will be -- the area being provided with the
4 notches gives enough -- because it -- that levee's
5 going to overtop. And with the notches, the velocities
6 are going to be higher, water flowing into the overflow
7 area.

8 And the second clarifying I would like to do
9 to the first question was: Are we creating any local
10 ponding?

11 The notches are being designed in such a way,
12 and with the stormwater management plan there won't be
13 any ponding. The water will be coming, draining back,
14 all the water will draining back into the levee area.

15 BOARD MEMBER RIE: So when the water drains
16 out, will the notches erode? Are they being protected
17 with any kind of fabric or rock?

18 BRANCH CHIEF SANDHU: Notches can erode in
19 natural environment. And the old portion of the levee,
20 that can erode. That's a possibility. And we are not
21 going to protect the old portion of the levee.

22 BOARD MEMBER RIE: Okay. Then my final
23 question is: Has the Corps agreed to accept the
24 setback levee as the project levee and abandon the
25 existing levee?

1 BRANCH CHIEF SANDHU: Yes. They have.

2 BOARD MEMBER RIE: Okay. Thank you.

3 PRESIDENT CARTER: Just a point of
4 clarification. Mr. Sandhu, both you and I believe
5 Mr. Wheeldon said that the abandoned portions of the
6 levee are going to be overtopped when we have high
7 flows.

8 Are we saying that there is a levee height
9 issue here? Are you going to be degrading those levees
10 other than the notches?

11 My understanding is that those are going to be
12 islands out there when there is high water. Water is
13 going to flow in, and the water that flows into that is
14 not going to be part of the channel. It's just
15 temporary storage.

16 So what is going on out there during high
17 water? If you're not degrading the tops of the levees,
18 I wouldn't expect them to be overtopped. Water is just
19 going to flow in and out of the notches. Can somebody
20 clarify that for me?

21 BRANCH CHIEF SANDHU: When you have the design
22 section of the levee plus the freeboard, they are not
23 like -- the maximum flood levels have gone up to 40,000
24 csf in this reach, and that means you can expect
25 overtopping of these levees.

1 When we design the setback levee in this
2 stage, that means we are providing for that protection
3 up to that level that the new levee has the setback
4 levels.

5 So if overtopping occurs in the existing
6 stage, which is at a lower level, then there will be
7 protection provided.

8 One -- naturally, over time these levels have
9 settled. In this area, we see that the original
10 construction from that point of the present levees at a
11 lower level.

12 PRESIDENT CARTER: Well, I mean we're talking
13 about ten-year protection here, right? 30 --

14 SECRETARY DOHERTY: He said 50.

15 BRANCH CHIEF SANDHU: That's existing, ten
16 years.

17 PRESIDENT CARTER: And the setback levee is
18 going to provide what level of protection?

19 BRANCH CHIEF SANDHU: 50-year protection.

20 PRESIDENT CARTER: Fifty years. So the
21 current levees provide ten year?

22 BRANCH CHIEF SANDHU: Yes.

23 PRESIDENT CARTER: Okay.

24 WATER RESOURCES PROJECT MANAGER WHEELDON: I
25 should point out a difference here.

1 The ten year level of protection is still
2 going to be the case. We're not differing the height
3 of the setback between the existing. So ten-year flood
4 protection is still the case.

5 PRESIDENT CARTER: You're talking about
6 50-year life.

7 WATER RESOURCES PROJECT MANAGER WHEELDON: Of
8 the --

9 PRESIDENT CARTER: Of the levee.

10 WATER RESOURCES PROJECT MANAGER WHEELDON:
11 Right.

12 PRESIDENT CARTER: Until it's undercut again
13 from erosion.

14 WATER RESOURCES PROJECT MANAGER WHEELDON:
15 Correct.

16 PRESIDENT CARTER: So we do not have a levee
17 height issue here. We have an undercut -- a waterside
18 bank erosion problem here.

19 WATER RESOURCES PROJECT MANAGER WHEELDON:
20 Correct. We are not doing anything to improve the
21 protection.

22 PRESIDENT CARTER: So these abandoned portions
23 of the levees are not going to go under unless they are
24 eroded away.

25 WATER RESOURCES PROJECT MANAGER WHEELDON:

1 Correct.

2 PRESIDENT CARTER: Okay.

3 BOARD MEMBER RIE: Is the levee going to
4 overtop between -- in the area between the two setback
5 levees?

6 WATER RESOURCES PROJECT MANAGER WHEELDON: I
7 think that the point of confusion here is what I
8 mentioned that in order to inundate the area between
9 the setback and existing levee that it would be
10 overtopped. That's not the case.

11 As soon as the water level reaches base of the
12 toe of the existing levee, it will start to fill in the
13 area between the two levees just as it would if there
14 were no existing levee.

15 So the water starts coming up, it reaches the
16 toe of the existing levee. It will start filling in
17 this area.

18 If it continues to raise, it will be at the
19 same level of the existing levee. The same water will
20 be -- or the water will be at the same level of the
21 setback levee. So if one overtops, the other one is
22 going to overtop.

23 BOARD MEMBER BROWN: The toe is at the bottom
24 of the levee.

25 WATER RESOURCES PROJECT MANAGER WHEELDON:

1 Yes. I'm saying through the notch that we're creating
2 because when the water starts coming up it will start
3 filling in through the notches.

4 PRESIDENT CARTER: Basically, it will be
5 the -- what is the existing landside elevation, the
6 notch will be cut at that elevation in the existing
7 levee into the channel.

8 BOARD MEMBER BROWN: Your question, I thought,
9 was a good one: What happens then? Does this
10 distribute the velocity more? Or is it just a kind of
11 a detention basin back in there?

12 WATER RESOURCES PROJECT MANAGER WHEELDON: I
13 think the effects on the velocity are negligible.

14 BRANCH CHIEF SANDHU: It provides more flow
15 area because you have expanded.

16 PRESIDENT CARTER: What it allows for is
17 continued meander of the stream which will eventually
18 burn energy because this -- the topography here, the
19 stream, flows quickly because of the fall, and
20 streamline meander is a natural process that occurs.

21 What all that does is, it solves the toe
22 erosion issue and allows the river to continue its
23 meander. Or the creek.

24 WATER RESOURCES PROJECT MANAGER WHEELDON:
25 Ward just brought up a good point. Due to the

1 erosion -- we're not arresting the erosion. The
2 erosion will continue. So within ten, maybe 20 years,
3 the erosion will be advanced through the original old
4 levee, so.

5 PRESIDENT CARTER: In 50 years you expect it
6 to be through this levee we're going to build?

7 WATER RESOURCES PROJECT MANAGER WHEELDON: To
8 it.

9 PRESIDENT CARTER: To it.

10 BOARD MEMBER RIE: How often are you guys
11 going to have to go out and clean out these notches?
12 Because vegetation is going to grow in them. They're
13 going to erode. They're going to cave in.

14 So after a couple years, they're not going to
15 be notches anymore. They're going to fill in. So does
16 this require DWR to go out and clean them out every
17 year?

18 WATER RESOURCES PROJECT MANAGER WHEELDON: The
19 levee will fall under our Levee Maintenance Program
20 which does that, yes.

21 BOARD MEMBER RIE: Okay.

22 WATER RESOURCES PROJECT MANAGER WHEELDON: I'm
23 not sure the frequency, but it will be maintained like
24 the rest of the levee system.

25 PRESIDENT CARTER: You're going to maintain

1 the abandoned levees?

2 WATER RESOURCES PROJECT MANAGER WHEELDON: Not
3 the abandoned levees, but the vegetation in these
4 areas.

5 PRESIDENT CARTER: Okay.

6 BOARD MEMBER RIE: The vegetation on the
7 abandoned levee, you're still going to maintain those?

8 WATER RESOURCES PROJECT MANAGER WHEELDON:
9 Yeah.

10 BOARD MEMBER RIE: Okay.

11 PRESIDENT CARTER: Any other questions?
12 Ms. Finch?

13 COUNSEL FINCH: You may ask for public comment
14 as well.

15 PRESIDENT CARTER: I'm sure. Any other
16 questions of Board staff?

17 VICE-PRESIDENT HODGKINS: If we approve this
18 resolution, and then subsequently in looking at the
19 resolutions of intention, say for instance we asked DWR
20 to move the retaining wall to widen the space, that's
21 not precluded by approving the project, is it?

22 COUNSEL FINCH: You're saying a subsequent
23 project would occur? I didn't understand.

24 VICE-PRESIDENT HODGKINS: No.

25 As we hear the property owners' comments,

1 which we haven't heard yet, we might focus in, in an
2 attempt to address those, on some way to give them more
3 space between the retaining wall and the shop. That
4 would be a modification of the project as we approved
5 it, but that's not the -- I'm asking you to confirm for
6 me that that's not the kind of modification that's
7 precluded by approving the project.

8 COUNSEL FINCH: Right. As far as material
9 change. In a way, I think that's a technical question
10 if it arises to a change. But minor changes.

11 PRESIDENT CARTER: Why don't -- that's a great
12 segue. Why don't we hear from the public on this?

13 Gentlemen, thank you. There will be other
14 opportunities to consider this. But what I'd like to
15 do is open it up to members of the public.

16 I do not have any cards here that indicate
17 that anybody from the public wants to address the Board
18 on this item is there anybody out there that would like
19 to address the Board? Very well.

20 Okay. Now, Butch, given that we haven't heard
21 anything, you could ask your question again? Or we
22 will entertain a motion on the resolution.

23 This resolution that's before us right now is
24 09-01, is to adopt the environmental findings,
25 mitigated negative declaration, and to approve the

1 project.

2 BOARD MEMBER SUAREZ: Mr. President, I so
3 move.

4 PRESIDENT CARTER: Okay. We have a motion.
5 Do we have a second?

6 SECRETARY DOHERTY: I'll second that.

7 PRESIDENT CARTER: We have a second. Any
8 further discussion? Comment from staff? Public?

9 Mr. Punia, would you call the roll?

10 EXECUTIVE OFFICER PUNIA: Board Member John
11 Brown?

12 BOARD MEMBER BROWN: Aye.

13 EXECUTIVE OFFICER PUNIA: Board Member Lady
14 Bug?

15 SECRETARY DOHERTY: Aye.

16 EXECUTIVE OFFICER PUNIA: Board Member Emma
17 Suarez?

18 BOARD MEMBER SUAREZ: Aye.

19 EXECUTIVE OFFICER PUNIA: Board Member Butch
20 Hodgkins?

21 VICE-PRESIDENT HODGKINS: Aye.

22 EXECUTIVE OFFICER PUNIA: Board Member Teri
23 Rie?

24 BOARD MEMBER RIE: Aye.

25 EXECUTIVE OFFICER PUNIA: Board President Ben

1 Carter?

2 PRESIDENT CARTER: Aye. Motion carries
3 unanimously.

4 We're on to the second phase of this. What I
5 might suggest is that we go ahead and break for lunch
6 at this time. Let's try and take a 45-minute lunch, if
7 possible. Be back here at 12:30, and we'll continue on
8 with the second portion of this discussion.

9 So we are in recess. Thank you.

10 (Lunch recess)

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1 AFTERNOON SESSION

2 --o0o--

3 PRESIDENT CARTER: Good afternoon, ladies and
4 gentlemen. Welcome back to the Central Valley Flood
5 Protection Board meeting.

6 As you recall, we were addressing Item 9. We
7 had adopted Resolution 09-01 and approved that
8 resolution.

9 We are now on to the second phase of this item
10 which is items 2, 3, 4, and 5 on the agenda.

11 I want to remind people that as part of the
12 presentation that we heard this morning, Item 4 that's
13 on the published agenda has been settled and will not
14 be considered by the Board.

15 So we have three Resolutions of Necessity
16 before us this afternoon. If possible, I might make a
17 suggestion that, just to speed things up, perhaps we
18 could consider Resolution 08-23, which also has a
19 duplicate resolution number, 09-02 --

20 COUNSEL FINCH: Actually, that will be 09-03.

21 PRESIDENT CARTER: 09-03. Okay. 09-03, and
22 each one successively?

23 COUNSEL FINCH: Correct.

24 PRESIDENT CARTER: Okay. So 08-23 becomes --
25 is also 09-03, 08-24 is 09-04, and 08-26 becomes 09-05?

1 COUNSEL FINCH: Correct.

2 PRESIDENT CARTER: Okay. Perhaps we might
3 consider the first two, 09-03, 09-04 together since the
4 parties are similar.

5 Does anybody have an objection to that?

6 (No response)

7 PRESIDENT CARTER: Okay. Then let's go ahead
8 and do that. Ms. Finch, do you want to introduce these
9 please.

10 COUNSEL FINCH: Certainly.

11 Consider the approval of Resolution 08-23 with
12 a duplicate resolution number 09-03, the Resolution of
13 Necessity to acquire certain real property or interest
14 in real property by eminent domain.

15 The owner is Margrit Boyd, trustee for the
16 Steve and Margrit Boyd Trust. Parcel number is 13668.
17 APN 027-170-39-1.

18 And the resolution itself is that:

19 The Board will find and determine and
20 declare that the public interest and
21 necessity requires the proposed project;
22 the proposed project is planned or
23 located in the manner that will be most
24 compatible with the greatest public good
25 and the least private injury; the

1 property described in the resolution is
2 necessary for the proposed project; and
3 the offer required by Section 7267.2 of
4 the Government Code has been made to the
5 owner of record.

6 And the second portion of the resolution is:

7 That the People of the State of
8 California acting by and through the
9 Central Valley Flood Protection Board
10 are authorized, empowered to acquire
11 through the power of eminent domain 1.97
12 acres of permanent levee and flood
13 control easements and utility easement
14 and 0.99 acres of temporary construction
15 easement.

16 And that is for the first Boyd property. And
17 then the second property is Resolution number 08-24,
18 and the cross-duplicate Resolution number 09-04. The
19 owner is Margrit Boyd. And the parcel number is 13669,
20 APN 027-170-02-1.

21 And it's a Resolution of Necessity to acquire
22 certain real property or interest in real property by
23 eminent domain.

24 And the first item to be moved on is the
25 Resolution of Necessity that:

1 The Board finds and determines and
2 hereby declares that the public interest
3 and necessity requires the proposed
4 project; the proposed project is planned
5 or located in the manner that will be
6 most compatible with the greatest public
7 good and the least private injury; the
8 property described in the resolution is
9 necessary for the proposed project; and
10 the offer required by section 7267.2 of
11 the Government Code has been made to the
12 owner.

13 And then the second resolution is that:

14 The People of the State of California
15 acting by and through the Central Valley
16 Flood Protection Board are authorized
17 and empowered to acquire through the
18 power of eminent domain 0.06 acres of
19 permanent levee and flood control
20 easement as required for the project.

21 PRESIDENT CARTER: Any questions for
22 Ms. Finch?

23 BOARD MEMBER BROWN: Question, Mr. Chairman.

24 We go ahead and adopt this, what kind of a
25 disadvantage does this put the property owner in in

1 negotiating what they think to be a fair settlement?

2 I assume the negotiations will continue. But
3 if this is adopted, do we paint them into a corner
4 here?

5 COUNSEL FINCH: There is no disadvantage to
6 the property owner.

7 BOARD MEMBER BROWN: There is none?

8 COUNSEL FINCH: Not in terms of the
9 negotiations. I mean the --

10 BOARD MEMBER BROWN: Well, the negotiations
11 are ongoing, correct?

12 COUNSEL FINCH: Correct.

13 BOARD MEMBER BROWN: All right. If we adopt
14 this Resolution of Necessity, does this put the
15 landowner in a more difficult position to negotiate a,
16 what they think, to be a fair settlement?

17 COUNSEL FINCH: Actually, once the eminent
18 domain action is filed, it allows for a different type
19 of negotiations which is not injurious to the landowner
20 at all. And the -- do you want -- Ward, would you like
21 to comment on this?

22 ASSISTANT CHIEF COUNSEL TABOR: Yeah, I would.

23 This is just another step along the way in the
24 land acquisition process. And what the adoption of the
25 resolution does is it shows that the State's serious

1 about moving forward with this project. That's an
2 important message to send to the landowner.

3 But as has been indicated by our Chief of the
4 Real Estate Branch, as well as Ms. Finch, is we are
5 going to continuously attempt to negotiate a voluntary
6 settlement of the matter.

7 Once the Resolution of Necessity passes, we're
8 not going to -- certainly not going to decrease our
9 amount of our offer. We're going to find ways to reach
10 a settlement.

11 We are in charge of the public fisc. We have
12 to justify the amount of money that we pay the
13 landowners. And we are always open to evidence that
14 landowners may have about value that we may have missed
15 in our appraisal process.

16 And if we can jointly identify with the
17 landowners elements of value that we missed that should
18 be taken into consideration, then it gives us a basis
19 to enhance what we're willing to pay.

20 Once the eminent domain action is filed, we
21 even have greater latitude to initiate a settlement.
22 So it -- we don't believe what -- it does send a
23 message, no doubt about it, that the State's serious
24 about this project and that we want to move forward.

25 BOARD MEMBER BROWN: I'm not sure that

1 answered my question, Mr. Chairman.

2 I assume they're serious too, in that they
3 don't want to see their property flooded out.

4 So I'm just going to suggest that the project
5 is serious. It's going to move ahead. And it sounds
6 like the issue is: What's the fair compensation? And
7 you're having trouble arriving at that, and that's part
8 of the negotiations.

9 Again, my question begs the answer that if we
10 go ahead and adopt this, does this give unfair leverage
11 to one party or the other? Or is it still the same
12 level playing field that it is today as far as
13 negotiations are concerned?

14 ASSISTANT CHIEF COUNSEL TABOR: This is the
15 process that our legislature has created for us to use.

16 We don't believe it creates any advantage one
17 way or the other. We're going to continue to negotiate
18 a voluntary resolution of this case as long as it
19 takes.

20 We use the definition of fair market value
21 that Mr. Farris referred to, which is the highest price
22 a buyer would pay knowing all that they know about the
23 property to a seller who knows everything they know
24 about the property with neither one being under a
25 compulsion to buy or to sell.

1 Obviously, that's a matter of opinion. It's a
2 matter that can be, obviously, different between a
3 landowner and the public agency. But we're looking for
4 a solution, and that solution is to reach a voluntary
5 transaction.

6 But we also want to meet our project schedule,
7 and that means adopting a Resolution of Necessity so
8 that the project can move forward and that there's not
9 a delay.

10 BOARD MEMBER BROWN: Again, I understand that.
11 That's not -- that was not the question. And I have
12 good faith that you would go ahead and continue to do
13 all that you said.

14 Again, I was just asking the question if it
15 puts one party into an unfair advantage in those
16 negotiations?

17 DEPUTY ATTORNEY GENERAL CAHILL: I would add
18 it does not put either party at an unfair advantage.
19 And in the end, should the parties not be able to reach
20 agreement, the landowner has the right to have a jury
21 determine what the value is.

22 BOARD MEMBER BROWN: Thank you very much.
23 That addresses the question.

24 BOARD MEMBER RIE: Mr. Tabor? You said that
25 you were going to continue negotiating with the

1 property owner, but I think Ms. Finch said that
2 negotiations are at an impasse?

3 ASSISTANT CHIEF COUNSEL TABOR: Well, they're
4 at impasse today. When a party wants to make a deal,
5 they make whatever overtures they can.

6 This is a process by which the government has
7 the ability to exercise the power of eminent domain
8 through the process we're in today.

9 So at this point, we haven't reached
10 agreement. That's really what we mean by the word
11 impasse. That doesn't mean we can't reach agreement in
12 the future. It means we haven't reached agreement up
13 to this date.

14 But the process of negotiation will continue.

15 BOARD MEMBER RIE: How many written offers has
16 the Department given the property owner?

17 ASSISTANT CHIEF COUNSEL TABOR: We have
18 provided a written offer, as Mr. Farris indicated, and
19 we await a response from the landowner. Each situation
20 is different.

21 Some landowners immediately respond by saying
22 we don't like your offer. Sometimes they offer
23 evidence that we can use as a basis to change our
24 offer. Sometimes they don't give us evidence.

25 Unless we have an evidentiary basis to support

1 changing where we are, we're not likely to change our
2 offer.

3 BOARD MEMBER RIE: So has there just been one
4 offer?

5 ASSISTANT CHIEF COUNSEL TABOR: I can't answer
6 that question. I believe there's probably just been a
7 single offer to each of these landowners. Some
8 landowners simply haven't responded in any way
9 specifically to our offer.

10 BOARD MEMBER RIE: So in this particular
11 transaction, has the owner responded?

12 ASSISTANT CHIEF COUNSEL TABOR: Can you --

13 BRANCH CHIEF FARRIS: Yes.

14 ASSISTANT CHIEF COUNSEL TABOR: They have
15 responded.

16 PRESIDENT CARTER: Mr. Farris, could you come
17 up please?

18 BRANCH CHIEF FARRIS: Paul Farris, Chief of
19 the Real Estate Branch. Yes. We are in contact with
20 the property owners.

21 BOARD MEMBER RIE: So what's the disagreement?
22 They have rejected our offer?

23 BRANCH CHIEF FARRIS: Yes, ma'am.

24 BOARD MEMBER RIE: Okay. It's as simple as
25 that? There is not an agreement on the dollar figure?

1 BRANCH CHIEF FARRIS: It is simple as that at
2 this point.

3 BOARD MEMBER RIE: Okay.

4 COUNSEL FINCH: My understanding is that
5 negotiations continue and that there is the possibility
6 that it can be resolved. It's not at an impasse with
7 the Boyd properties. It's my understanding that
8 they're ongoing negotiations.

9 And I apologize if your understanding was that
10 I portrayed the Boyd, or any of the acquisition
11 negotiations, as at an impasse. I didn't mean to
12 portray that.

13 I meant that, explaining the Resolution of
14 Necessity, more is about time lines and ongoing
15 negotiations than any particular impasse with any of
16 the landowners.

17 BOARD MEMBER RIE: So this particular one is
18 not at an impasse?

19 COUNSEL FINCH: I'm not a part of the
20 negotiations. But I don't want what I said to be
21 portrayed as it being at an impasse, and I think
22 Mr. Farris could --

23 PRESIDENT CARTER: I guess in my own plain
24 English, the reason we're here is the parties have not
25 been able to agree. I don't know how you define that,

1 whether that's impasse or just not agreement.

2 But this process launches a new phase of the
3 process that forces the parties to get together, either
4 before or in court. So -- and it's anybody's judgment
5 as to whose advantage or disadvantage that is. I think
6 we all have opinions on that.

7 But we're here because we're trying to break
8 the impasse. We're trying to move the process along.
9 And we're trying to force the parties to come to some
10 agreement or have the courts decide what their
11 agreement will be.

12 BOARD MEMBER RIE: I just question the need
13 for the resolution if there's only been one offer and
14 one response in one year's time period or -- you said
15 it started in 2007? In two years, we have one offer,
16 one response?

17 I just question the need for the resolution.

18 BRANCH CHIEF FARRIS: To follow up Mr. Tabor's
19 train of thought, as stands this afternoon, we are at
20 an impasse. We do not have a signed transaction
21 between the parties.

22 We'll continue striving to get that
23 transaction; but as it stands today, we are at an
24 impasse. We are negotiating very strongly, very hard.

25 PRESIDENT CARTER: Ms. Suarez.

1 BOARD MEMBER SUAREZ: Mr. President, going
2 back to Mr. Brown's point, which is: You're here today
3 asking us to authorize you to do something that will
4 give you some advantage.

5 I wouldn't characterize it as unfair, but it
6 gives you a negotiating advantage with these folks.
7 That's the only reason we're here, so you can get the
8 negotiating advantage with these folks.

9 PRESIDENT CARTER: Okay.

10 SECRETARY DOHERTY: Are there many items or
11 just one item in disagreement in negotiations at this
12 point?

13 BRANCH CHIEF FARRIS: That's a very good
14 question, ma'am. The bottom line is the total just
15 compensation which is made up of three -- can be made
16 up of three elements: Number one, the value of the
17 real property rights being acquired. Number two,
18 severance damages, if applied; there aren't any in this
19 case. And third, if physical damage is a result of the
20 project.

21 So in each one of these cases before you,
22 there are -- the equation is a sum of one of those
23 three, or two of those three.

24 BOARD MEMBER BROWN: I think I asked this
25 question earlier, and I'd like to clarify it again

1 though: Is there disagreement in the design of the
2 facilities?

3 BRANCH CHIEF FARRIS: Not to my knowledge.

4 BOARD MEMBER BROWN: Or just the compensation?

5 BRANCH CHIEF FARRIS: There is no disagreement
6 to my knowledge of the design. In our negotiations
7 with the property owners, we are talking about just
8 compensation.

9 PRESIDENT CARTER: Mr. Punia, did you have
10 something to say?

11 EXECUTIVE OFFICER PUNIA: I just want to bring
12 to the Board's attention that in this case the DWR is
13 acting not as another party. It is your agent or your
14 staff because the project is a Board-sponsored project.

15 PRESIDENT CARTER: Any other questions of
16 staff?

17 BOARD MEMBER RIE: Yes.

18 Is the Board going to be briefed in closed
19 session at some point with the dollar figure of the
20 initial offer and the counteroffer from the property
21 owner?

22 COUNSEL FINCH: No. Because it's not public
23 information. I don't think it comes under any closed
24 session law. Maybe Ginny can comment on this.

25 DEPUTY ATTORNEY GENERAL CAHILL: Once an

1 eminent domain action is filed, then you could in fact
2 be briefed in closed session under the pending
3 litigation exception.

4 BOARD MEMBER RIE: But not at this point? Are
5 we allowed to go into closed session for property
6 negotiations?

7 DEPUTY ATTORNEY GENERAL CAHILL: If it's been
8 noticed, which it hasn't been today, noticed for closed
9 session. But on either of those grounds, you could
10 probably go into closed session once the action is
11 underway.

12 BOARD MEMBER RIE: But could we next month go
13 into closed session and be briefed on the amount of the
14 offer and the counteroffer under property negotiations?

15 PRESIDENT CARTER: Are you asking could we do
16 that without adopting the Resolution of Necessity or
17 after we adopt the Resolution of Necessity?

18 BOARD MEMBER RIE: Before we adopt the
19 resolution.

20 COUNSEL FINCH: I think Ginny is --

21 BOARD MEMBER RIE: You want to get back to us
22 on that?

23 COUNSEL FINCH: One thing I would like to note
24 is part of the Resolution of Necessity, that even
25 though price and the offer is an area of interest to

1 everyone, it's not part of the Resolution of Necessity.

2 It actually is not really relevant to the
3 Resolution of Necessity itself. Because for the
4 resolution you need to find, you know, those four
5 points, that the public interest and necessity requires
6 the property and all that.

7 And so even though it is of interest at this
8 point, it's not relevant to the decision. Then once
9 the eminent domain action begins, you have the closed
10 session.

11 BOARD MEMBER RIE: I think it's of interest to
12 this Board -- eminent domain is going to be very
13 expensive. So if we're off by, you know, a small
14 amount of money, it may be better to discuss it and
15 authorize the staff to increase their offer.

16 COUNSEL FINCH: Part of the problem with that
17 is to have the legal authority to do that. There are
18 laws that require that you can't go beyond certain
19 amounts.

20 You can't make gifts of public funds. So if
21 there hasn't been the justification to support a
22 certain price, it can be portrayed gifts of public
23 funds. And even if the Board would like to direct
24 staff to offer more, it's not possible legally.

25 PRESIDENT CARTER: Ms. Suarez?

1 BOARD MEMBER SUAREZ: Thank you, Mr.
2 President. I have a process kind of question.

3 If we authorize this proceeding, before you
4 enter into actual litigation, would this Board be
5 consulted again for approval? Or does this give you
6 the card to go in and file the action without
7 additional approval from us?

8 COUNSEL FINCH: Are you saying that -- is it
9 possible to have a process where the Board approves the
10 Resolution of Necessity, negotiations continue, and if
11 a price is -- no -- and then we come back in closed
12 session or --

13 BOARD MEMBER SUAREZ: Before you file the
14 actual litigation.

15 COUNSEL FINCH: I think that might be
16 something we have to look into.

17 PRESIDENT CARTER: Very good.

18 While we're collecting some information, I do
19 have one card. Ms. Wong or Mr. Wong? This gentleman
20 wanted to speak on this particular topic.

21 If there's anybody else who wants to speak on
22 this item, I encourage you to let us know please.

23 MR. WONG: Mr. President, Coren Wong on behalf
24 of John and Cathy Klein.

25 I would point out that I'm actually interested

1 in speaking on Resolution 08-26/09-05. So if you would
2 like me to defer until then, I'm happy to do so. Or if
3 you want me to speak now, I'm happy to do that as well.

4 PRESIDENT CARTER: We're considering the other
5 resolutions. If there's aspects of your comments that
6 are germane to these, then it would be appropriate for
7 you to speak now.

8 MR. WONG: No. It's in particular to the
9 Kleins' property, so I'll just wait until you reach
10 that resolution.

11 PRESIDENT CARTER: Very well. Thank you.
12 Ms. Cahill, did you find anything out about closed
13 session issues?

14 DEPUTY ATTORNEY GENERAL CAHILL: Actually, I
15 think Ms. Finch has gone to look at the question about
16 instituting litigation.

17 Ordinarily, there is a Bagley-Keene exception
18 to talk to a real estate negotiator. But again, the
19 issues in the Resolution of Necessity are those that
20 were gone over today, you know: Is it necessary for
21 the project? Have you designed it in a way that's
22 minimized the public harm?

23 And I don't -- I don't think you need to know
24 the amount of the offer which is, I think, considered
25 confidential at this point. Ms. Finch had said before

1 it was confidential under the Public Records Act. And
2 I think that's for the protection of the landowner, so
3 it's conceivable if they wanted to waive that they
4 could.

5 But this isn't really the time to be
6 negotiating at this point in public on price. It
7 really is on the four items that were presented.

8 And then, if you wanted to know more about it
9 later, we could have a closed session at a future
10 meeting.

11 PRESIDENT CARTER: Well, ladies and gentlemen,
12 clearly the Board is taking this action very, very
13 seriously and does not consider these kinds of things
14 without appropriate deliberation.

15 We have two Resolutions of Necessity before
16 us. I do know that the Bagley-Keene allows the Board
17 to enter into closed session for either pending
18 litigation or litigation purposes. The only other
19 exception that I'm aware of is personnel. I was not
20 aware of a property negotiation exception, but perhaps
21 there is one.

22 If we were to take action on these things,
23 that does not -- once we adopt the Resolution of
24 Necessity, that triggers this next phase of the project
25 which would provide a reasonable expectation that

1 there's pending litigation or impending litigation, and
2 the Board would probably be justified in entering into
3 a closed session after a Resolution of Necessity would
4 be adopted. So that might be an option and a way
5 forward on this particular issue.

6 SECRETARY DOHERTY: So we could perhaps make a
7 motion and approve these resolutions; and then after
8 that, there would be time to go into closed session --
9 not necessarily today, but --

10 PRESIDENT CARTER: Not today. Definitely not
11 today.

12 SECRETARY DOHERTY: Correct. Okay.

13 DEPUTY ATTORNEY GENERAL CAHILL: But there is
14 a real property exception that provides the body can in
15 closed session advise its negotiator in situations
16 involving real estate transactions and in negotiations
17 regarding price and terms of payment.

18 PRESIDENT CARTER: So we do not have to -- we
19 could do it without approving the resolution then, of
20 necessity?

21 DEPUTY ATTORNEY GENERAL CAHILL: Arguably, you
22 could. The advantage of the Resolution of Necessity,
23 among other things, is to keep to the schedule --

24 PRESIDENT CARTER: Right.

25 DEPUTY ATTORNEY GENERAL CAHILL: -- so that

1 negotiations don't just continue indefinitely. There's
2 an advantage to having it done so that you can move
3 forward to the next stage of the project.

4 PRESIDENT CARTER: Okay.

5 BOARD MEMBER SUAREZ: Mr. President, are you
6 ready to entertain a motion?

7 PRESIDENT CARTER: I am.

8 BOARD MEMBER SUAREZ: And after a motion will
9 be opportunity for the Board Members to have additional
10 discussion?

11 PRESIDENT CARTER: Absolutely.

12 BOARD MEMBER SUAREZ: Then I move we adopt the
13 resolutions before us.

14 PRESIDENT CARTER: Okay. So there is a motion
15 on the table to approve Resolution 08-23, the
16 corresponding Resolution number 09-03; and approve
17 Resolution 08-24, corresponding Resolution 09-04.

18 VICE-PRESIDENT HODGKINS: Second.

19 PRESIDENT CARTER: And we have a second.
20 Discussion?

21 BOARD MEMBER RIE: Yes. This is a question
22 for Mr. Farris.

23 After the Board adopts a Resolution of
24 Necessity, how long is it going to take if you truly
25 are at an impasse and you do need to condemn? How long

1 is that process going to take?

2 BRANCH CHIEF FARRIS: Wow. I can't answer
3 that. I believe the next step that's critical to the
4 project being constructed is obtaining an Order of
5 Possession. In our schedule, we're counting for 120
6 days to that point in time.

7 BOARD MEMBER RIE: So four months.

8 BRANCH CHIEF FARRIS: Once the Resolution of
9 Necessity is adopted, the next benchmark is the Order
10 of Possession.

11 BOARD MEMBER RIE: And who issues the Order of
12 Possession?

13 BRANCH CHIEF FARRIS: I believe a court.

14 BOARD MEMBER RIE: Is it realistic to think
15 that from the time you adopt the Resolution of
16 Necessity to when a court makes that determination it's
17 going to happen that quickly?

18 COUNSEL FINCH: May I answer that question?

19 My understanding is that the court sets the
20 time line. And to answer your question as well, Emma,
21 that if the Resolution of Necessity is adopted today,
22 then negotiations will continue and the eminent domain
23 process will become part of that.

24 And by the next meeting, we will have closed
25 sessions regarding all aspects of the negotiations, and

1 then the court will be involved and set the time line.

2 And it does go to the issue of if getting the
3 project completed by the completion date because the
4 eminent domain process assists in the negotiations.

5 BOARD MEMBER SUAREZ: I guess my question is
6 more specific to before the proceedings become -- go
7 before a court can you come to us and update us and
8 tell us what happened with the negotiations, what
9 happened with the price differentiation, and why do you
10 have to go and involve a court?

11 COUNSEL FINCH: Actually, right now,
12 Mr. Farris can expand on the negotiations with
13 Ms. Boyd. He just cannot reveal the offer amounts.

14 And beginning with next month, we can brief
15 you, and because of the eminent domain action, in
16 closed session, until this is resolved.

17 Am I not understanding your question?

18 BOARD MEMBER SUAREZ: I don't think you are.

19 COUNSEL FINCH: You want to be briefed?

20 BOARD MEMBER SUAREZ: I want you to come back
21 to us before we get a court involved.

22 COUNSEL FINCH: Right. And so my question
23 back to you is: You mean any filings with the court?
24 That is -- or do you --

25 BOARD MEMBER SUAREZ: Correct.

1 DEPUTY ATTORNEY GENERAL CAHILL: I believe
2 Ms. Suarez means the filing of an eminent domain
3 action. Are you going to come back to the Board to
4 authorize the institution of litigation, the filing of
5 the suit?

6 COUNSEL FINCH: Right. And you're asking if
7 that's a procedural aspect to this, or are we able to
8 do that if requested?

9 BOARD MEMBER SUAREZ: And I think I know the
10 answer should be yes, because it's our litigation.

11 COUNSEL FINCH: It is. And the answer is yes.
12 If you want to approve the resolution and then ask that
13 it be put off, that probably is possible. But then it
14 does get back to the project time line.

15 BOARD MEMBER RIE: Okay. If this does need to
16 go to court, what if the court sets the time line eight
17 months out? Does that affect the project from moving
18 forward this year?

19 COUNSEL FINCH: It would, obviously.

20 VICE-PRESIDENT HODGKINS: May I ask: Before
21 you get the Order of Possession, isn't there a minimum
22 time required from when you file that before the court
23 can grant it? I think it's 90 days. Which is to give
24 the property owner an opportunity to come in and raise
25 issues, if he has them, before the court grants that

1 opportunity.

2 That's not a trial. We get possession of the
3 property.

4 COUNSEL FINCH: Before I answer that, I do
5 want to remind everyone that negotiations will
6 continue. And if in the next few weeks a price is
7 agreed upon, we will stop the eminent domain process.

8 But I need to get back to you on your
9 question.

10 VICE-PRESIDENT HODGKINS: Yeah. See, you need
11 to lay out for the Board how this process works all the
12 way through. Because there is, candidly, a sort of a
13 lack of trust that we approve this resolution and then
14 staff goes off and takes advantage of the authority
15 that is given in eminent domain.

16 Now, I know from my personal experience that
17 doesn't happen. At least, not in my view working for a
18 government agency.

19 But you haven't explained the process at all,
20 the whole process. Because there are -- the court is
21 going to make you hold additional negotiations before
22 it will let you into court to try the matter of price.
23 And -- to try and settle.

24 The Board could order you, before you file
25 the -- I mean, your -- we're your client; are we not?

1 We could order you to come back to us and give us a
2 report on what the hold-up is, what the difference is
3 before you file for the Order of Possession. Could we
4 not?

5 Does anybody know the process?

6 COUNSEL FINCH: To answer that question,
7 unfortunately, as you know, there have been three DWR
8 attorneys working on this, and eminent domain isn't my
9 area primarily, and Mr. Tabor had to go to a meeting.

10 I do have someone here that I can consult with
11 and get back to you.

12 But I do want to remind you that today the
13 focus is the Resolution of Necessity. And the only
14 requirement for the Resolution of Necessity is that an
15 offer has been made.

16 I know you're not satisfied with this answer,
17 but bear with me. And I know you want all these
18 questions answered today, it sounds like, before you
19 will vote on the Resolution of Necessity.

20 BOARD MEMBER SUAREZ: No, Ms. Finch.

21 I think what we're trying to communicate and
22 express is that we understand the power we're about to
23 give you. We want you to use it wisely.

24 These are property owners who value their
25 property. And they have invested years, emotional

1 connections, all kinds of stuff. And we have to
2 respect that.

3 I personally don't have a problem giving you
4 that power. I want you to use it wisely. And the only
5 check and balance that I have that you're going to use
6 it wisely is to make sure that you come back every so
7 often and let us know what the heck is going on.

8 And I understand that there is a court that's
9 going to decide this issue. Court proceedings are
10 expensive. We don't think about that because we're
11 government.

12 For private people, it is a chunk of money.
13 We have to consider that before we get people all
14 tangled up in litigation. I, at least from my
15 perspective, I like to make sure that there is a way to
16 check and balance this enormous power we're about to
17 give you in negotiating with these folks.

18 COUNSEL FINCH: Part of the law is, if the
19 offer is unreasonable and the landowner can prove that,
20 they do get all their costs.

21 PRESIDENT CARTER: I think -- understood.
22 Understood. We -- I guess what's the Board's pleasure
23 here?

24 We have a motion and a second before us to
25 approve the resolutions. Do we want to make approval

1 subject to revisiting this issue in whatever it is, two
2 weeks or next month, to be sure that we're monitoring
3 the process and aware of the details?

4 BOARD MEMBER SUAREZ: Yes, Mr. President.

5 I'd like to propose to modify my motion to
6 include, again, giving this tool for DWR to negotiate
7 on our behalf, but that no court proceedings begin
8 without -- or be instituted on our behalf without DWR
9 coming back and talking to us; and that includes and
10 should include a closed door briefing on what the price
11 discrepancy issues are.

12 BRANCH CHIEF FARRIS: Mr. President?

13 PRESIDENT CARTER: Just one moment. Do we
14 have a second on that amount to the motion?

15 VICE-PRESIDENT HODGKINS: I'll second it.

16 PRESIDENT CARTER: We have a motion and a
17 second. Okay. Mr. Farris?

18 BRANCH CHIEF FARRIS: Thank you. If it would
19 ease the Board's mind, I'd like to offer the following
20 consideration for you: We are working very diligently
21 with the property owner that you're addressing today,
22 Mrs. Margrit Boyd, to the point of 8:30 last night and
23 7:15 this morning, I was talking with her.

24 So we are moving forward. We are talking.
25 She has provided us two independent appraisals which

1 staff has considered.

2 So we are negotiating openly. We are taking
3 all the technical information and evaluating it just as
4 quickly as it hits my desk. I provide it to the staff
5 appraisal section, and that's been our focus this week.

6 PRESIDENT CARTER: Okay. Thank you.

7 VICE-PRESIDENT HODGKINS: Paul, can you tell
8 me: If this resolution were passed, you would have to
9 come back to the Board and report in closed session on
10 the status of these negotiations before any papers are
11 filed with the court, would that slow your process
12 down? You can do that at our next meeting which is
13 February what?

14 EXECUTIVE OFFICER PUNIA: Tentatively, we
15 haven't made any decision. It's still scheduled the
16 third Friday. But there is a possibility we may be
17 furloughed and may have to --

18 VICE-PRESIDENT HODGKINS: And that may end up
19 screwing up the meeting date.

20 PRESIDENT CARTER: February 19 is the next
21 scheduled Board meeting. I'm sorry. That's 2010.

22 (Laughter)

23 PRESIDENT CARTER: February 20. February 20
24 is the next scheduled Board meeting. That is a Friday.
25 Third Friday of February.

1 BRANCH CHIEF FARRIS: Furlough Friday.

2 BOARD MEMBER RIE: Mr. Farris, what is the
3 latest date you can start construction?

4 BRANCH CHIEF FARRIS: I'd leave that up to
5 Mr. Inamine, but the projections that we're using is
6 the start of construction, the 1st of October 2009.

7 BOARD MEMBER RIE: Okay.

8 PRESIDENT CARTER: Ladies and gentlemen, we
9 have a motion and a second. Any further discussion?

10 BOARD MEMBER BROWN: You have an amendment.

11 SECRETARY DOHERTY: Yes.

12 PRESIDENT CARTER: We have a motion,
13 amendment, and second and accepted.

14 VICE-PRESIDENT HODGKINS: Could we get the
15 motion restated just to be sure we all understand it?

16 I think the motion is to approve the
17 resolution with the condition that the Department of
18 Water Resources advise the Board on the status of
19 negotiations before they file any action with the
20 court.

21 SECRETARY DOHERTY: And to hold a closed door
22 session.

23 VICE-PRESIDENT HODGKINS: To what?

24 SECRETARY DOHERTY: To hold a closed door
25 session.

1 VICE-PRESIDENT HODGKINS: Well, it will be
2 closed session.

3 PRESIDENT CARTER: And that is to approve the
4 resolutions, not -- so it's resolutions 08-23,
5 duplicate number 09-03; and 08-24, duplicate number
6 09-04.

7 SECRETARY DOHERTY: Correct.

8 BOARD MEMBER BROWN: Mr. Chairman, I heard
9 Emma state it just a little bit different. Butch said
10 to advise; I think Emma said to approve.

11 SECRETARY DOHERTY: Emma said to adopt, yes.

12 BOARD MEMBER BROWN: They could advise us and
13 then just go ahead and move on. But if they ask for
14 concurrence or approval -- what did you intend?

15 BOARD MEMBER SUAREZ: I intended approval. We
16 are their client on this matter, so.

17 PRESIDENT CARTER: Okay. So approval of the
18 resolutions as stated, and require the DWR to come back
19 and advise their client, the Board, on the status of
20 negotiations and get their approval and concurrence on
21 the direction they're headed prior to any court filings
22 on the matter. Everybody understand?

23 SECRETARY DOHERTY: Mm-hmm.

24 PRESIDENT CARTER: Any further comment,
25 discussion?

1 PRESIDENT CARTER: Mr. Punia, would you please
2 call the roll?

3 EXECUTIVE OFFICER PUNIA: Board Member Emma
4 Suarez?

5 BOARD MEMBER SUAREZ: Aye.

6 EXECUTIVE OFFICER PUNIA: Board Member Butch
7 Hodgkins?

8 VICE-PRESIDENT HODGKINS: Aye.

9 EXECUTIVE OFFICER PUNIA: Board Member Teri
10 Rie?

11 BOARD MEMBER RIE: Aye.

12 EXECUTIVE OFFICER PUNIA: Board Member John
13 Brown?

14 BOARD MEMBER BROWN: Aye.

15 EXECUTIVE OFFICER PUNIA: Board Member Lady
16 Bug?

17 SECRETARY DOHERTY: Aye.

18 EXECUTIVE OFFICER PUNIA: Board President Ben
19 Carter?

20 PRESIDENT CARTER: Aye.

21 Resolutions are approved unanimously.

22 Moving on to the third and last resolution.

23 This is to consider approval of Resolution 08-26/09-05,
24 or Resolution of Necessity to commence the eminent
25 domain proceeding to acquire a levee and flood control

1 easement and utility easement over assessor's parcel
2 number 027-160-061, Board parcel 13673 owned by John C.
3 Klein and Catherine L. Klein, husband and wife as
4 tenants in common.

5 Ms. Finch, did you want to add anything here?

6 COUNSEL FINCH: Yes. The two resolution
7 numbers that will be referenced are number 08-26 and
8 09-05, the Resolution of Necessity to acquire certain
9 real property or interest in real property by eminent
10 domain.

11 And the first resolution will be that:

12 The Board finds and determines and
13 declares that the public interest and
14 necessity require the proposed project;
15 the proposed project is planned or
16 located in the manner that will be most
17 compatible with the greatest public good
18 and the least private injury; the
19 property described in the resolution is
20 necessary for the proposed project; and
21 the offer required by section 7267.2 of
22 the Government Code has been made to the
23 owner

24 And the second resolution is that:

25 The People of the State of California

1 acting by and through the Central Valley
2 Flood Protection Board hereby are
3 authorized and empowered to acquire
4 through the power of eminent domain 0.78
5 acres of permanent levee and flood
6 control easement and utility easement as
7 required for project purposes.

8 PRESIDENT CARTER: Okay. Does staff have
9 anything else to add? Any questions of staff?

10 Mr. Wong would you like to address the Board
11 on this item?

12 MR. WONG: Thank you, Mr. President, members
13 of the Board. My name's Coren Wong, and I represent
14 the landowners, John and Catherine Klein in this
15 matter.

16 And first, before I begin, let me compliment
17 the Board for the very thoughtful and insightful
18 questions that have been asked. I followed each of
19 them, and I'm pleased to hear so many questions and
20 that the Board is considering these issues and is
21 considering not only the interests of the people as a
22 whole but also the interests of the individual
23 landowners who are being directly impacted.

24 As I believe it was either Ms. Cahill or
25 Ms. Finch stated earlier, just the value or the amount

1 that the Kleins will be paid is not at issue here
2 today. That is not to be considered.

3 What's being considered, as you've been told,
4 are the adoption of the resolution, and it's those four
5 elements.

6 And what I want to focus on is the fourth of
7 the four elements, and that is that a proper offer
8 pursuant to Government Code 7267.2 has been made to the
9 Kleins. And I would respectfully submit that in this
10 case no such offer has been made.

11 Now, let me back up and explain a little bit
12 of the process that the Board is going through. Before
13 a public entity can file an eminent domain action, the
14 entity's legislative body must adopt the Resolution of
15 Necessity. In this case, that's this Board.

16 Before a Resolution of Necessity can be
17 adopted, the agency must determine what's just
18 compensation for the property being offered, and that's
19 right out of Government Code 7267.2.

20 Once they determine what just compensation is,
21 they must make an offer in the amount no less than the
22 amount they determine to be just compensation to the
23 owner, and that offer must offer full, just
24 compensation.

25 In this case, there was a question about

1 whether the walnut trees are being compensated for, and
2 there wasn't a direct answer. Well, let me directly
3 answer that for you: No.

4 The code requires that the value of all
5 improvements located on the property be included in
6 just compensation. Case law provides that the trees
7 are improvements. Therefore, the offer has to include
8 a value for trees.

9 Now, how do we know that the trees were not
10 included as part of the just compensation? Because
11 7267.2 requires, along with the written offer, that a
12 summary statement of the offer be provided.

13 One of the elements that must be included in
14 that summary statement is a description of all the
15 improvements that just compensation is to cover. So if
16 the offer the Kleins received included the walnut
17 trees, their written statement that they received would
18 have included an element for their walnuts.

19 There is no such line item. Much as if there
20 were severance damages, which there are not here, there
21 would have been an item that would have said severance
22 damages, X dollars. If it were good will: Good will,
23 X dollars.

24 Now, this is not just a matter of mere
25 formality. Case law has held in City of San Jose

1 versus Great Oaks Water Company that the failure to
2 provide a summary statement renders the Resolution of
3 Necessity null and void. Therefore the action is null
4 and void.

5 What happened in that case, just real briefly,
6 is the owners were given summary statement, I believe
7 right before the hearing, before one of the court
8 hearings. And they went forward, there was a
9 Resolution adopted, the case was filed.

10 The landowners' attorney filed a summary
11 judgment motion. And the court granted the motion,
12 denied the public entity the right to take, dismissed
13 the action.

14 But what should be of -- also of concern to
15 this Board is, along with denying that -- along with
16 dismissing the case, the court also ordered the public
17 entity to pay the landowners' litigation costs, one of
18 the few ways in eminent domain that a landowner could
19 have their attorneys' fees paid for. That is because
20 the code says when an eminent domain action is
21 dismissed, the landowner could recover his fees.

22 So that's one of our concerns. There is no
23 compensation provided for the walnut trees.

24 Also, there was discussion, I believe, before
25 the lunch hour about paying for the appraisal costs,

1 that the public entity provides a written offer, and
2 then the landowner has the opportunity to hire his or
3 her independent appraiser at the Department's expense.

4 The code specifically requires that at the
5 time the public entity makes the offer they also offer
6 to pay for that independent appraisal if the landowner
7 so chooses. No such offer was made.

8 Furthermore, since our office is very familiar
9 with this process -- in fact, we generally are on the
10 other side representing the public entities -- once we
11 hired our appraiser and got his invoice, we forwarded
12 it to the Department with the request it be paid along
13 with our appraiser's qualifications.

14 Still didn't get payment. Instead, what we
15 got back was a letter and a contract, and it basically
16 said before we will pay -- before we will consider
17 paying for your appraiser, you must sign this contract
18 which says you will give us a copy -- you'll give us a
19 summary of appraisal, of your appraiser's appraisal;
20 you will indemnify the State for any damages as a
21 result of the appraisal; and that, if we request it,
22 you'll give us an abridged version of the entire
23 appraisal.

24 There is no such requirement in the code. The
25 code is quite simple. It says at the time the public

1 entity makes the offer, they shall offer to pay the
2 reasonable cost up to -- not to exceed \$5,000 of the
3 appraisal performed by an appraiser hired by the
4 landowner. It's quite simple.

5 That has not happened. That did not happen.
6 We heard earlier that counsel's office is in process of
7 negotiating that, of taking care of that. I have yet
8 to hear anything about that.

9 We've written several letters. I believe one
10 of the letters was shared with the Board. That just
11 has not happened. This should have happened a long
12 time ago, when the offer was first made. That is
13 another reason why I do not believe the Board can
14 legitimately adopt a Resolution of Necessity this
15 afternoon.

16 Finally, the last reason is both the state and
17 federal regulations require that, once the offer is
18 made, that the landowner be given the opportunity to
19 consider the offer, do some investigation, and if he or
20 she desires to do so make counterproposals, provide
21 information to the public entity. The federal
22 regulations suggest that a minimum of 30 days be given
23 for this negotiation process.

24 Federal regulations also explicitly state that
25 the construction project schedule shall not interfere

1 with this negotiation process. And this is all before
2 the Resolution of Necessity is adopted.

3 What -- my partner and my clients and our
4 appraiser attended, I believe, two meetings with DWR
5 staff and circulated proposals, gave them our
6 counteroffer. All we received in return were
7 criticisms of our appraiser's work.

8 Now, I don't consider that negotiations.
9 Negotiations usually involve, you know, we get the
10 offer, we provide a counteroffer and some basis; and
11 then if the Department sees some legitimacy in the
12 points we raise, then, you know, they consider them.

13 But that's not to say they have to find our
14 concerns to be legitimate. If they do not find them to
15 be legitimate, then they need to address why and
16 explain why and provide more support for their
17 position. That's not what happened here. So there
18 were no negotiations.

19 And lastly, what I wanted to address is a
20 little bit -- there was some concern about lack of
21 explanation of the process.

22 As I mentioned, before the eminent domain
23 action can be filed, the Board has to adopt a
24 resolution. One of the resolutions that the Board is
25 asked -- being asked to adopt authorizes the Department

1 to file the eminent domain action. I believe Board
2 Member Suarez had asked earlier whether the staff would
3 come back and advise the Board before litigation is
4 filed.

5 Under the code, that is not required. Now I
6 understand if the Board chooses to amend the
7 resolution, as I believe it did with the previous
8 resolutions, to require staff to come back before
9 litigation is filed, they may be able to do that.

10 But under the Code of Civil Procedure, what
11 happens is the Board adopts the resolution, and that
12 resolution authorizes staff to go file an eminent
13 domain action; and, at least when we are representing
14 public entities, we don't go back to the Board until
15 there is a settlement offer to consider.

16 And there was also a question about the
17 process for the Order of Possession. The way it works
18 is: Once the complaint is filed -- theoretically, if
19 the Board were to adopt a resolution today, the
20 complaint theoretically could be filed today.

21 Realistically, that generally doesn't happen;
22 but theoretically, it could happen today, so the
23 complaint gets filed today.

24 For the Order of Possession, the Department
25 would have to file a motion. Since the property is

1 occupied, the hearing on that motion cannot be held any
2 sooner than 90 days. So the soonest, if it were filed
3 today, is they could have a hearing in 90 days.

4 Assuming the court issued the order on that
5 90th day, possession cannot be had until I believe it's
6 30 days after service of the order.

7 So if the action were filed today, and a
8 motion were filed today, and we got the soonest hearing
9 date possible, that would be in 90 days. Assuming the
10 court granted the motion at that time, and the order
11 were served on that date, it would be 30 days from then
12 which, if I calculate it right, would be 120 days from
13 now would be the soonest possession could be had.

14 Unless there are further questions, I thank
15 you for your time.

16 PRESIDENT CARTER: Any questions for Mr. Wong?

17 VICE-PRESIDENT HODGKINS: Mr. Wong, your
18 statements about the adequacy of the appraisal and the
19 court case: If -- let us say theoretically that that
20 appraisal, if it were not modified, was subsequently
21 upheld, could subsequently be upheld by the court as
22 not being in compliance with the law, it would
23 invalidate the procedure.

24 But if in effect that appraisal were modified
25 in plenty of time to give you and your client an

1 opportunity to review it, would the fact that the Board
2 adopted the resolution with an inadequate appraisal
3 then still let us get up before the judge and have the
4 judge say: Even though you modified it, the resolution
5 is invalid because at the time you adopted the
6 resolution, it wasn't a valid appraisal. Do you know?

7 MR. WONG: If I understand your question
8 correctly, it's -- what the courts will do is look at:
9 At the time the resolution was adopted, was the
10 appraisal valid at that time?

11 So as of today, no, the appraisal is not
12 valid. And if the Board were to go ahead and adopt the
13 resolution, and then say in a month a proper appraisal
14 would be provided, under Great Oaks, the Department's
15 right to take would be still subject to challenge.

16 And furthermore, what I would probably argue
17 is as further evidence that the appraisal was invalid,
18 say your Honor, look: It is invalid, as further
19 evidenced by the fact that they later went back and
20 corrected and added the items that were missing and
21 made it invalid.

22 So it's not a cure after the fact.

23 VICE-PRESIDENT HODGKINS: Thank you. I
24 appreciate your candor.

25 MR. WONG: You're welcome.

1 BOARD MEMBER RIE: I have a question.

2 MR. WONG: Yes.

3 BOARD MEMBER RIE: So the offer that was made
4 to your client did not include the walnut trees?

5 MR. WONG: Correct.

6 BOARD MEMBER RIE: How many walnut trees are
7 there?

8 MR. WONG: I believe there's around 60, 60 or
9 so.

10 BOARD MEMBER RIE: 60? And do these walnut
11 trees produce walnuts for commercial use? Are they
12 sold?

13 MR. WONG: They are.

14 BOARD MEMBER RIE: And how old are the trees?

15 (Audience response)

16 BOARD MEMBER RIE: Okay. So they are
17 20-year-old walnut trees, and they are -- I'm sorry;
18 could you say --

19 MR. WONG: This is Mrs. Klein. Perhaps I
20 could have her join me --

21 BOARD MEMBER RIE: Sure.

22 MR. WONG: -- to address this specific
23 question.

24 BOARD MEMBER RIE: Could you state your name
25 for the record?

1 MS. KLEIN: Catherine Klein.

2 BOARD MEMBER RIE: Okay. Thank you for coming
3 up. How many walnut trees are there?

4 MS. KLEIN: On the ranch or at issue?

5 BOARD MEMBER RIE: That are being eliminated
6 by the project.

7 MS. KLEIN: I believe there is 54.

8 BOARD MEMBER RIE: 54. And --

9 MS. KLEIN: I didn't bring my records. I
10 didn't think I'd have to talk.

11 BOARD MEMBER RIE: And they are producing
12 walnuts that are sold for commercial purposes?

13 MS. KLEIN: Yes.

14 BOARD MEMBER RIE: Okay. So there is a value
15 there.

16 MS. KLEIN: Yes.

17 BOARD MEMBER RIE: And loss of production,
18 loss of use.

19 MS. KLEIN: Yes.

20 BOARD MEMBER RIE: Okay. Thank you very much.

21 MS. KLEIN: Okay.

22 SECRETARY DOHERTY: How many pounds of walnuts
23 would you get to a tree?

24 MS. KLEIN: Per year?

25 SECRETARY DOHERTY: Yeah. Approximately.

1 MS. KLEIN: I don't honestly know. I could go
2 home and call you. What we got by the ranch divided by
3 how many trees there were, but I don't know how much
4 there were.

5 PRESIDENT CARTER: You don't have a
6 guesstimate what the production is per acre?

7 MS. KLEIN: No. I'd have to look at the forms
8 we got from people that buy them.

9 PRESIDENT CARTER: Do you have any feeling for
10 what the tree spacing it is out there?

11 MS. KLEIN: 30 feet.

12 PRESIDENT CARTER: 30 by 30?

13 MS. KLEIN: Mm-hmm. 30 foot diamonds.

14 PRESIDENT CARTER: 30 foot diamonds. Okay.

15 BOARD MEMBER RIE: And are there any -- Ben,
16 you probably have to help me out -- are there any like
17 special walnut trees?

18 MS. KLEIN: There's pollinators. Chandlers
19 are the variety. They cannot self-pollinate. They
20 have to have a separate type of variety to pollinate
21 them so they produce walnuts.

22 BOARD MEMBER RIE: Okay. So in this little
23 section where the project is going to be located, there
24 are pollinating walnut trees?

25 MS. KLEIN: Yes.

1 BOARD MEMBER BROWN: Mr. Chairman?

2 PRESIDENT CARTER: Mr. Brown.

3 BOARD MEMBER BROWN: I thought I heard DWR
4 state that they had appraised the property based on its
5 residential value which generally is a higher value
6 than even production agriculture.

7 I asked the question in this case: Is the
8 residential value, if that's what they appraised it on,
9 of a higher value than what it is, the agricultural
10 value?

11 That's my question while you're thinking about
12 that.

13 And then the other one, in the agreement
14 process, for payment, when I first read that, I thought
15 that was pretty heavy for the Department to ask that
16 agreement until I read that the, in the liability
17 portion of it, was for the protection of the people
18 that you would hire to come and make the appraisal.

19 And that -- if I read that right, the
20 liability was limited to those folks that came on the
21 property during the appraisal process. If that was the
22 case, I felt much more comfortable with that.

23 So I have those two questions for you.

24 BOARD MEMBER RIE: Thank you for coming up.

25 MR. WONG: First, Ms. Rie, I saw in my notes

1 some information that may help with your question.

2 What I'm reading here is loss of five pollinator trees
3 and 64 I guess nonpollinator trees would be lost.

4 And to address Mr. Brown's question, first as
5 to the highest and best use being appraised as
6 residential and whether that would be a higher value:
7 Unfortunately, I don't know the answer. That's really
8 a value question, and that's -- I would have to defer
9 to our appraiser, and he's not here today.

10 BOARD MEMBER BROWN: My experience generally,
11 if you can get ag land to be appraised at the
12 residential value, then that generally is consistently
13 the higher value.

14 MR. WONG: And that may be. But I would still
15 point out that the code requires all improvements to be
16 valued. So to say the trees have zero value --

17 BOARD MEMBER BROWN: Well --

18 MR. WONG: There has to be some value for just
19 compensation. There has to be some value allocated.

20 BOARD MEMBER BROWN: Well, if they appraised
21 it as ag land, then certainly what you're stating is
22 correct. But I'm not sure. If they appraised it at
23 the higher value, of residential value, then the
24 agricultural question may become moot.

25 MR. WONG: It may be that the agricultural

1 value of the trees may be lost, but certainly there
2 would be value of shade and any other type of value
3 that the trees would add to the value of residential
4 property, especially in an area such as Woodland where
5 it does get quite warm in the summer.

6 BOARD MEMBER BROWN: It seems like you may
7 have an option, is that you could have it appraised as
8 residential value, and then have it appraised as an
9 agricultural value in its current condition and see
10 which one is the highest.

11 MR. WONG: Well, that's not exactly the way it
12 works. The way it works is the appraiser has to
13 determine what's the highest and best use. So they
14 don't appraise it in both manners and then pick the
15 highest value.

16 What they do is they determine what the
17 highest and best use of the property is, and then they
18 appraise it as that use.

19 But still I'd go back to as -- if the highest
20 and best use is ag land, then you have the value of the
21 walnut trees as a producing crop. If you value it as
22 residential, you still have some value to the trees.
23 Arguably not as much as if it were ag, but still some
24 value.

25 BOARD MEMBER BROWN: Okay. What about the

1 latter part in the agreement process? I read that to
2 where the liability was associated only with the
3 appraisal process.

4 MR. WONG: Right. I didn't read it that
5 carefully. But my point is this: The code doesn't put
6 any limitations on the obligation to pay for the
7 appraisal.

8 And if I may, this is Code of Civil Procedure
9 Section 1263.025 subdivision (a), says:

10 A public entity shall offer to pay the
11 reasonable cost, not to exceed \$5,000,
12 of an independent appraisal ordered by
13 the owner of a property that the public
14 entity offers to purchase under a threat
15 of eminent domain at the time the public
16 entity makes the offer to purchase the
17 property. The independent appraisal
18 shall be conducted by an appraiser
19 licensed by the Office of Real Estate
20 Appraisers.

21 BOARD MEMBER BROWN: I understand that.

22 MR. WONG: There's no condition on -- I guess
23 the only condition on the reimbursement provision is
24 that such an appraiser -- appraisal be performed.

25 BOARD MEMBER BROWN: I understand.

1 PRESIDENT CARTER: Does it preclude
2 conditions? I mean, does it prevent conditions being
3 placed on the reimbursement?

4 MR. WONG: No, it doesn't. But statutory --
5 just common statutory interpretation is you interpret
6 the statute by its plain language. Since there is
7 no -- it's mandatory language: A public entity shall
8 offer to pay.

9 There is a plethora of case law that says
10 "shall" is mandatory. It's not discretionary. It's a
11 must do.

12 And the offer must be made at the time the
13 statutory offer is made. So first of all, no offer was
14 made. Second of all, once we requested reimbursement,
15 no reimbursement was provided.

16 BOARD MEMBER BROWN: I was just giving it a
17 reasonable test. If they are asking for liability
18 protection, the State, from here on out, that's one
19 thing. If they're asking just liability protection for
20 when the contractor that you hire comes on to your
21 property to do the appraisal, that -- that kind of felt
22 reasonable.

23 MR. WONG: And I could understand the thought
24 process. However, at the time the appraisal is made --
25 well, at no time is there any contractual relationship

1 between the State and the appraiser. So to the extent,
2 you know, our appraiser is out there appraising the
3 property and falls in an uncapped well or something of
4 that nature, there is no liability on the part of the
5 State. They didn't cause -- you know, they just had no
6 duty. It's going to -- just common tort law, it's
7 going to fall on the property owner, if anything. So
8 there really is no need for indemnity.

9 SECRETARY DOHERTY: Mr. Wong, perhaps one of
10 the reasons why it couldn't be decided residential: If
11 it's in the Williamson Act, they may not be allowed to
12 build houses on it for a period of years.

13 And then also, in your appraisal, you can't
14 just figure the walnut trees for one year. It took
15 twenty years to get them to produce what they're
16 producing, and you've got to figure out the value of
17 their lifetime of production.

18 MR. WONG: Correct.

19 SECRETARY DOHERTY: So that adds to the figure
20 too.

21 MR. WONG: That would be correct. Because you
22 can't just go to, you know, buy a baby walnut tree and
23 say here you go. There's a vast difference in value.
24 You're absolutely correct.

25 SECRETARY DOHERTY: Yeah.

1 PRESIDENT CARTER: Mr. Hodgkins?

2 VICE-PRESIDENT HODGKINS: I have a question
3 for -- I'm going to ask Ms. Cahill; she can refer to
4 whoever she thinks is appropriate.

5 But Mr. Wong has outlined clearly what he
6 believes to be our shortcomings in terms of whether or
7 not we've met the requirements of the law necessary to
8 adopt this resolution.

9 Are you confident that you have met the
10 requirements of the law; and that if the Board goes
11 forward and adopts this resolution, you're prepared to
12 defend the details of which -- I'm sure you haven't
13 heard them all -- but what Mr. Wong laid out?

14 Or do you want thirty days to go back and
15 review whether you're in compliance?

16 DEPUTY ATTORNEY GENERAL CAHILL: I'm going to
17 refer this to Ms. Finch, since it was that legal office
18 that's done the legal work on this item.

19 COUNSEL FINCH: I think at this time it would
20 be a good idea to hear from the Real Estate Branch
21 to -- perhaps Mr. Farris would like to come up -- and
22 to hear the other side of the story.

23 BOARD MEMBER RIE: I have one more question
24 for Mr. Wong.

25 The fact that we're losing some pollinator

1 trees because of the project: How many other trees
2 that are not within the project will be lost because of
3 the pollinator tree loss?

4 MR. WONG: Unfortunately, I do not know that.

5 BOARD MEMBER RIE: Will there be some loss?

6 (Audience response)

7 BOARD MEMBER RIE: Okay. The property owner
8 says it's possible.

9 And will there be any severance because of the
10 amount of trees that will be lost? Will it affect the
11 business operation, the profitability of the operation?

12 MR. WONG: Well, clearly, to the extent their
13 crop is reduced, it will affect the profitability. If
14 you were producing one ton of walnuts at one point, and
15 you are now producing half a ton or something of that
16 nature, sure, there will be a reduction in value.

17 BOARD MEMBER RIE: Is that a legitimate item
18 to include in the offer? The loss of profitability?

19 Because I would assume you have to have a
20 certain amount of walnuts in production to pay for the
21 equipment and the fertilizer and the maintenance.

22 MR. WONG: I believe it would be. And the
23 basis for my belief is just that the requirement is
24 that just compensation be paid, and just compensation
25 is designed to compensate the property owner for the

1 loss suffered.

2 BOARD MEMBER RIE: Was that included in the
3 offer?

4 MR. WONG: I don't -- I do not -- actually, I
5 have the offer here. Actually, I can answer. No.
6 There was no compensation for the walnuts or any form,
7 whether loss of the trees or loss of the value or
8 anything of that nature.

9 BOARD MEMBER RIE: Okay. Thank you.

10 PRESIDENT CARTER: Thank you, Mr. Wong.

11 MR. WONG: Thank you.

12 PRESIDENT CARTER: Mr. Farris?

13 BRANCH CHIEF FARRIS: Paul Farris, Chief of
14 the Real Estate Branch.

15 I'd like to respond to Mr. Wong's comments. I
16 don't have the same order he presented them, but we'll
17 work on this.

18 First of all, regarding the owner-initiated
19 process, the owner-initiated appraisal process: It is
20 our policy that we require an agreement be filled out
21 and sent back to the Department which is our trigger to
22 pay the property owner for that appraisal.

23 The Real Estate Branch looks to the Office of
24 Chief Counsel; and if and when that policy is changed,
25 we will accompany whatever Mr. Sandino's staff

1 attorneys tell us to do in that regard. As it stands
2 now, we require an agreement.

3 BOARD MEMBER BROWN: Can you clear up the
4 issue of the limited liability? Is it just for, as I
5 read it, is it just for the appraiser or contractor
6 that comes on the property?

7 BRANCH CHIEF FARRIS: I cannot, Mr. Brown. I
8 am not familiar with that element of the contract, the
9 statute.

10 COUNSEL FINCH: You know, as I mentioned
11 earlier today, I know that the Office of the Chief
12 Counsel is working with the Real Estate Branch to get
13 that payment made.

14 BOARD MEMBER BROWN: Without the agreement?

15 COUNSEL FINCH: Do you mean the Resolution of
16 Necessity? Oh, without the agreement.

17 Certain mechanisms are required to issue a
18 check by the State. And we're in the process of
19 working on that to have the mechanism in place so we
20 can issue the check.

21 BOARD MEMBER BROWN: Without an agreement?

22 COUNSEL FINCH: That's being considered, if
23 that's possible. Because we still have to comply with
24 other state laws in addition to the one that was cited.

25 PRESIDENT CARTER: Mr. Farris?

1 BRANCH CHIEF FARRIS: The second point I'd
2 like to refer to is the appraisal summary statement.

3 Mr. Wong is absolutely correct. Our appraisal
4 summary statement did not include payment for trees.
5 It was our assessment the highest and best use was
6 based on rural residential. It is our opinion that the
7 trees are not factored in with that type of
8 highest-and-best-use analysis.

9 It is also my opinion that we have satisfied
10 the requirement under 1245.23 to make a written offer
11 with just compensation to the owner of record.

12 Just a couple other points, if I may.

13 We were instructed by the Kleins' attorney on
14 July 14th to terminate negotiations which we complied
15 with.

16 It was countered back to us that we were sent
17 a counteroffer on November 13th. We do not have a
18 record of that. The attorneys did send one, a copy of
19 it, soon after we asked. On December 31st, they did
20 send us a copy of their November 13th revised summary
21 of their valuation.

22 PRESIDENT CARTER: I'm sorry. I wasn't
23 listening carefully enough. You were instructed by the
24 owners' attorney to terminate negotiations in July?

25 BRANCH CHIEF FARRIS: Correct.

1 PRESIDENT CARTER: And then they subsequently
2 sent a counteroffer back to you on November 13th, which
3 you didn't receive until December 31?

4 BRANCH CHIEF FARRIS: Correct, after asking
5 for a copy of it. That's correct.

6 PRESIDENT CARTER: So it went to DWR counsel?
7 Or how -- what happened?

8 BRANCH CHIEF FARRIS: I cannot speak to that.

9 PRESIDENT CARTER: And the December 31st was
10 December 31st of 2007?

11 BRANCH CHIEF FARRIS: 2008.

12 PRESIDENT CARTER: 2008. So three weeks ago.

13 BRANCH CHIEF FARRIS: Correct.

14 PRESIDENT CARTER: Okay. So between July 2008
15 and December 2008, there have been no discussions?

16 BRANCH CHIEF FARRIS: I wasn't personally
17 involved in the negotiations -- that is correct.

18 PRESIDENT CARTER: Okay. Any other questions
19 for Mr. Farris? Hearing none, then Butch's question is
20 back to you, Ms. Finch.

21 COUNSEL FINCH: Okay. And the question
22 basically is: Would I feel comfortable with you moving
23 forward on the vote, as legal?

24 PRESIDENT CARTER: And would you be willing to
25 defend the Board if action were taken based on the

1 arguments that Mr. Wong presented to us today?

2 COUNSEL FINCH: I think that gets back to that
3 the Board needs to find and determine that each of
4 these four points have been met, including the offer
5 required by the Government Code was made.

6 And it sounds like Mr. Wong believes it
7 hasn't, and then Mr. Farris stated it has because it
8 was based on rural residential.

9 And so it sounds like the almonds -- the
10 walnuts weren't -- wait. Since it wasn't agricultural,
11 the walnuts weren't factored in that way; they were
12 factored in through the rural residential.

13 And that seems to be a question for the Board
14 to decide. Do you feel comfortable enough that you can
15 find and determine that prong number four was met?

16 And then there is a possibility that this can
17 be put off for a month.

18 PRESIDENT CARTER: We understand that it's
19 incumbent upon us to be comfortable with this.

20 What we're asking you is whether or not you
21 are comfortable, given the facts that you know, that
22 you would be willing to go to court defending the
23 Board.

24 VICE-PRESIDENT HODGKINS: And the Board's not
25 personally liable.

1 What's at stake here is the project. Because
2 if it's not in conformance with the law, six months --
3 well, it's probably more like four months from now, on
4 the courthouse door, the judge is going to say go back
5 and start over on this.

6 And so I'm simply asking you as the attorney
7 of record, I think: Are you confident that it's
8 adequate?

9 COUNSEL FINCH: My recommendation would be to
10 put it off for a month and allow these issues to be
11 resolved because the project does allow for that.

12 PRESIDENT CARTER: Okay. Thank you.

13 BOARD MEMBER SUAREZ: Mr. President, I would
14 like to propose that we treat this set of resolutions
15 in the same fashion that we treated the last set of
16 resolutions.

17 I don't see any material difference between
18 this group and the last. It buys us time. The
19 resolution is conditioned, has a condition that DWR has
20 to come back to us and brief us and get our approval
21 before any litigation is commenced.

22 So that would be any suggestion at this point.

23 PRESIDENT CARTER: So you're making a motion
24 to approve Resolution 08-26/09-05, with the stipulation
25 that DWR return to the Board to and consult and advise

1 us on status of negotiation and seek concurrence and
2 direction from the Board moving forward prior to filing
3 any -- prior to any filings being made to the courts?

4 BOARD MEMBER SUAREZ: Yes.

5 PRESIDENT CARTER: Is there a second?

6 BOARD MEMBER BROWN: I'll second that.

7 PRESIDENT CARTER: There is a second. Any
8 further discussion?

9 BOARD MEMBER RIE: I'm not so sure that it's
10 going to keep the project on track if it turns out that
11 this Resolution of Necessity is based on an appraisal
12 that doesn't meet the requirements of the law.

13 I would think that the landowners' attorney
14 could probably file some sort of motion with the
15 court -- I don't know; what do you call it when you
16 stop the process, an injunction? -- to get an
17 immediate ruling from the court that this doesn't meet
18 the requirements.

19 So that would be my concern, that it doesn't
20 keep the project on the time line but potentially
21 introduces a challenge.

22 I think I would prefer that DWR go back and
23 take a look at their appraisal and have a discussion
24 with the property owner on the value of the walnuts and
25 then come back and brief us next month.

1 SECRETARY DOHERTY: Might I ask a question of
2 Mr. Farris? You said that you gave them a rural
3 appraisal. Why did you not keep it in farming rural
4 appraisal?

5 BRANCH CHIEF FARRIS: The highest and best use
6 was determined to be rural residential which has a much
7 higher fee value than an agricultural highest and best
8 use.

9 SECRETARY DOHERTY: And was that permissible?
10 Are they in the Williamson Act?

11 BRANCH CHIEF FARRIS: I don't know the details
12 of this property like that.

13 COUNSEL FINCH: On all the properties, there
14 was Williamson Act consultation.

15 SECRETARY DOHERTY: There what?

16 COUNSEL FINCH: There was consultation with
17 Department of Conservation. And as Mr. Tabor pointed
18 out, this portion, if it was in the Williamson Act, it
19 will now be outside of the Williamson Act.

20 SECRETARY DOHERTY: But it would affect the
21 rest of the property.

22 COUNSEL FINCH: Now are you talking about the
23 value?

24 SECRETARY DOHERTY: Yes.

25 COUNSEL FINCH: It will affect the value of

1 the rest of the property?

2 SECRETARY DOHERTY: It would affect the rest
3 of the property in that they might not be allowed to
4 build anymore. They might not be able to sell. They
5 might -- there's a lot of things that would be affected
6 by it.

7 BOARD MEMBER BROWN: Just that portion comes
8 out of the Williamson Act.

9 SECRETARY DOHERTY: Yes, but what I'm saying
10 is: You have to have a certain amount to remain in the
11 Williamson Act, and they might not be allowed to sell
12 another parcel. That's where they would be affected.

13 VICE-PRESIDENT HODGKINS: There was recently a
14 seminar put on by Department of Conservation on
15 Williamson Act for DWR; and I am confident after
16 listening to that seminar that if this has been
17 coordinated with the Department of Conservation that
18 the Williamson Act problems, if there are any, have
19 been identified and are being addressed. Because it
20 was a very good training session.

21 PRESIDENT CARTER: Okay. So we have a motion
22 and second. Any further comment, discussion?

23 BOARD MEMBER RIE: I have a question for legal
24 counsel.

25 If this resolution were approved today, don't

1 we need to wait until the appeals period is over before
2 we proceed forward? Because they do have the right to
3 appeal our decision.

4 COUNSEL FINCH: The Resolution of Necessity.
5 That's a technical enough question, I have to ask
6 someone else.

7 BOARD MEMBER RIE: Okay.

8 COUNSEL FINCH: And I'll be back in one
9 minute.

10 BOARD MEMBER RIE: Okay.

11 PRESIDENT CARTER: Just to comment from my
12 perspective while we're waiting here: We talk about
13 valuations and highest and best use. It seems ironic
14 to me that we say that the highest and best use is
15 rural residential or agriculture when the State has
16 deemed that the highest and best use is flood control
17 and flood protection.

18 But we never seem to value land at that value
19 which is in fact probably a hell of the lot higher than
20 either ag or rural residential.

21 So it's just a point, an observation.

22 VICE-PRESIDENT HODGKINS: But if that worked,
23 Ben, then when it's a sewer easement, I could say the
24 highest and best use of a sewer easement is worth
25 whatever I can get.

1 PRESIDENT CARTER: Or gold mining. We don't
2 need to debate it.

3 Are there any other comments? We want to wait
4 for Nancy to come back? Let's take a ten-minute
5 recess, ladies and gentlemen.

6 (Recess)

7 PRESIDENT CARTER: Ladies and gentlemen,
8 hopefully you've all had some coffee and we are moving
9 on here.

10 As you recall, we have a motion to approve
11 Resolution 08-26/09-05 with the stipulation that DWR
12 come back to the Board and advise us of the status of
13 negotiation, seek concurrence on the negotiations and
14 direction from the Board prior to filing any court
15 actions and any papers with the courts. Motion and
16 second.

17 Any further discussion? Any questions? Okay.

18 Ms. Rie, I just reiterated, restated the
19 motion and the fact that we have a second.

20 Any questions or discussion, further
21 discussion on it?

22 BOARD MEMBER RIE: I just have one more
23 question for our engineering staff.

24 Has this area ever flooded? And if the
25 project doesn't move forward this year, what are the

1 risks to the property behind the levee?

2 BRANCH CHIEF SANDHU: This particular area has
3 not flooded before because we did not have overtopping
4 at this point, but areas adjacent to this, they have
5 flooded.

6 And the risk, there is definitely a risk, as
7 we have encroached the main cross-section already. The
8 berm left is only ten to 15 feet berm. If we have high
9 event -- and normally we are getting high events once
10 in every ten years -- and then that's the situation.
11 If we have a high event, there is definitely a risk
12 that this section of the levee will give up.

13 BOARD MEMBER RIE: Will it overtop or erode?
14 What's going to happen?

15 BRANCH CHIEF SANDHU: There might be a breach,
16 what we were showing that to you in our first slide on
17 our presentation. It can be a clear breach. It starts
18 with overtopping, and then the overtopping starts
19 erosion, and finally it ends up with a breach.

20 BOARD MEMBER RIE: Okay. Thank you.

21 PRESIDENT CARTER: Any other questions? Okay.
22 We have a motion and a second.

23 Mr. Punia, would you call the roll, please?

24 EXECUTIVE OFFICER PUNIA: Board Member Emma
25 Suarez?

1 BOARD MEMBER SUAREZ: Aye.

2 EXECUTIVE OFFICER PUNIA: Board Member Butch

3 Hodgkins?

4 VICE-PRESIDENT HODGKINS: Aye.

5 EXECUTIVE OFFICER PUNIA: Board Member Teri

6 Rie?

7 BOARD MEMBER RIE: Abstain.

8 EXECUTIVE OFFICER PUNIA: Board Member John

9 Brown?

10 BOARD MEMBER BROWN: Aye.

11 EXECUTIVE OFFICER PUNIA: Board Member Lady

12 Bug?

13 SECRETARY DOHERTY: Aye.

14 EXECUTIVE OFFICER PUNIA: Board President Ben

15 Carter?

16 PRESIDENT CARTER: Aye.

17 Motion carries, five ayes and one abstention.

18 Very good. We will move on.

19 Thank you very much ladies and gentlemen.

20 Item 10, Establishment of Two Central Valley

21 Flood Protection Board Subcommittees.

22 Consider establishing a subcommittee to

23 develop policy regarding indemnification requirements

24 for joint powers authorities. Let's do that one first,

25 item 1, Ms. Cahill.

1 DEPUTY ATTORNEY GENERAL CAHILL: Yes. I think
2 we're following up with discussions we've had at prior
3 meetings. I've done some additional research on
4 questions that the Board asked and have provided that
5 information to the Board.

6 The question before you today is: Do you want
7 to form either a working group of just two people to
8 work with the affected community, or do you want to
9 have a formal subcommittee of three people that would
10 be fully subject to all the Bagley-Keene requirements?

11 And there are pros and cons.

12 The pros of two people is that it's less
13 formal. You could still put out a notice of when you
14 were going to meet, get a list of people that are
15 interested and make sure they get notices of all the
16 meetings, but you'd have a lot more flexibility with
17 regard to agenda and topics. You know, people could
18 bring things up at the meeting without having all the
19 Bagley-Keene formalities.

20 The advantage to the three-person board is
21 that it's very public, very transparent. If you think
22 this is so important that you want, you know, a large
23 audience to observe more closely, you could go that
24 way.

25 In all likelihood, the interested parties

1 would be able to participate in a small working group.
2 It provides more flexibility, but it's entirely up to
3 the Board.

4 I think one advantage of doing either is that
5 it would give those parties a chance to submit
6 materials, arguments. We really haven't seen anything
7 by way of written analysis from the people who are in
8 opposition to requiring individual JPA members,
9 requiring them to also sign the local project
10 cooperation agreements.

11 So I think the only thing, really, for your
12 decision today is: Do you want to form some sort of a
13 group at all? Or do you want to discuss it again
14 before the full Board? Or -- and I guess there is a
15 third possibility is just a workshop.

16 The Board would announce a workshop, you know,
17 just a one-time meeting. Everyone interested could
18 come. They could submit materials in advance if they
19 wished. The whole Board or some part of it could work
20 on the matter then and then finally bring it back to
21 the whole Board at a regular meeting for a decision.

22 So I don't know that I have a recommendation.
23 I tend to think the informality of the small group is
24 good. But if you think three Board Members would be
25 interested and would be likely to attend, then you

1 better form the official committee so that, you know,
2 if more than two people are interested and want to
3 participate, you would let as many participate as would
4 like.

5 PRESIDENT CARTER: I think we did receive some
6 written communication from SAFCA last November on this
7 in relation to adopting a resolution with regard to
8 Three Rivers; and also, Mr. Shapiro made a presentation
9 at that point that was 20 pages long on his
10 perspective.

11 So we have received written comment from folks
12 other than staff on this, so I think we need to
13 recognize that.

14 Ms. Rie?

15 BOARD MEMBER RIE: What would be the purpose
16 of this subcommittee? Would it adopt the policy or
17 would the policy come back?

18 DEPUTY ATTORNEY GENERAL CAHILL: It would come
19 back to the Board. It would be in effect an advisory.

20 BOARD MEMBER RIE: I would think if a policy
21 is going to come back and the full Board is going to
22 vote on it, everybody on this Board needs to understand
23 what the issues are.

24 They need to understand what JPA is, what a
25 Local Cooperation Agreement is, what is paternal

1 liability, what's tort liability, what is the Corps'
2 relationship with the State with regard to the Local
3 Cooperation Agreement?

4 My understanding is the only thing the Corps
5 requires of us is that we hold and save them harmless
6 from damages, and those are damages of our agency, of
7 our acts or omissions.

8 So there's a lot of really complicated issues,
9 and I think in order for this Board to adopt a policy,
10 I think the full Board needs to understand what each of
11 those mean.

12 PRESIDENT CARTER: Okay.

13 VICE-PRESIDENT HODGKINS: Well, I personally
14 think asking the whole Board to be involved in trying
15 to formulate a policy is a cumbersome process. But I
16 do think that if we formed the committee, since this
17 could end up in a policy that would come before the
18 Board, it would offer the opportunity for any and all
19 Board Members to attend the meetings of that committee
20 and also has the benefit of -- in that there are
21 Bagley-Keene requirements for public notification, to
22 the extent there is a policy recommendation that comes
23 back to the Board, it gives potentially affected
24 parties more opportunity and notice that that item is
25 under consideration for the Board through the noticing

1 of the committee meetings.

2 So I personally would like to try a formal
3 subcommittee. I think two meetings, maybe three. The
4 first would be for the purpose of trying to identify
5 what the real issues are and trying to get the parties
6 that have an interest in this, including the members of
7 the JPA, to come back and help us find a way to address
8 the various issues that are here.

9 And there are -- there's the overall question
10 of: Do we try to put the liability for inverse
11 condemnation on local agencies knowing, in fact --
12 there is no way any local agency in the Central Valley,
13 at least, could pay a \$450 million judgment. So that's
14 part of what we have to think about.

15 And then we have the less controversial
16 questions of who takes on the maintenance if a JPA is
17 dissolved, and is there some minimum level of financial
18 responsibility that we want to be sure a JPA has in
19 executing that agreement?

20 So those are the kinds of questions I see, and
21 I think a subcommittee would work the best.

22 PRESIDENT CARTER: I tend to agree with Butch.
23 And I don't know that there's -- I don't know that
24 there's an interest of all the Board Members to
25 participate, but it certainly is helpful to have a core

1 group schedule a meeting that is specifically focused
2 on that issue as opposed to trying to resolve this
3 issue as part of the regular business of the Board in a
4 monthly board meeting. So it allows us to make some
5 headway and get some transaction in between regular
6 Board meetings.

7 Opening it up as a subcommittee does allow any
8 and all Board Members to attend because they will be
9 properly noticed and be subject to the Bagley-Keene
10 consideration. But it affords that opportunity, and it
11 doesn't mean everybody has to attend. It is subject to
12 the discretion of each and every Board Member, so it
13 gives us a good amount of flexibility.

14 Having stated that, how many Board Members are
15 willing to participate on a subcommittee on this issue?

16 SECRETARY DOHERTY: I would be willing to.

17 BOARD MEMBER RIE: I would too.

18 PRESIDENT CARTER: Good, good.

19 PRESIDENT CARTER: Any other comments from the
20 Board? Mr. Shapiro wanted to address the Board as
21 well.

22 BOARD MEMBER RIE: What is our financial
23 situation? Can we --

24 PRESIDENT CARTER: Dire.

25 (Laughter)

1 BOARD MEMBER RIE: -- afford to set up public
2 subcommittee meetings and get the transcriber and -- I
3 mean, there's a lot of other things that we need to do,
4 and we've lived without a policy on this sort of thing
5 since the Board has been in operation, since -- I don't
6 know -- 96 years?

7 So I frankly don't see the need for the
8 policy, so I'm wondering what the urgency is and where
9 this fits into our overall budget and priority list.

10 EXECUTIVE OFFICER PUNIA: It's definitely
11 going to add more work for the staff to arrange
12 subcommittee meetings. It takes definitely resources,
13 staff resources and financial resources.

14 We can accommodate, but it's definitely going
15 to take a bite out of the State -- out of the staff and
16 the financial resources.

17 PRESIDENT CARTER: I think in the near term, I
18 think there are dollars in the budget for two or three
19 meetings. But much beyond that, we would be stretched.

20 And the reason there are dollars in the budget
21 is because we have dollars allocated to the Board that
22 we're not using in the form of Board salaries and staff
23 salaries and other things. So those could potentially
24 be used to support this effort.

25 BOARD MEMBER RIE: Well, there's a lot of

1 really complicated legal issues here with tort
2 liability, paternal liability, Local Cooperation
3 Agreements. So I'm wondering, do we have the budget
4 for legal counsel to look at the legal aspects of a
5 policy like this?

6 BOARD MEMBER SUAREZ: Mr. Shapiro is going to
7 provide that for free.

8 (Laughter)

9 SECRETARY DOHERTY: How wonderful.

10 PRESIDENT CARTER: Mr. Shapiro, would you like
11 to confirm that.

12 MR. SHAPIRO: I'd be happy to confirm that I
13 will provide all legal services for free so long as
14 they are completely biased towards my clients.

15 (Laughter)

16 ASSISTANT CHIEF COUNSEL TABOR: And while the
17 Board pays for the DOJ's support, as you know in your
18 MOA with DWR, we are offering our supplemental legal
19 services because they don't cost you anything. So
20 we're willing to participate to the extent that we can
21 as well.

22 VICE-PRESIDENT HODGKINS: Could I ask you,
23 Ward, from this perspective of DWR's counsel office:
24 Is this an issue that should be pursued and better
25 understood?

1 ASSISTANT CHIEF COUNSEL TABOR: Absolutely.

2 VICE-PRESIDENT HODGKINS: Thank you.

3 PRESIDENT CARTER: Okay. Mr. Shapiro?

4 MR. SHAPIRO: Thank you, President Carter,
5 Members of the Board.

6 I'm Scott Shapiro, representing a number of
7 joint powers agencies and other organizations in the
8 Central Valley. I want to speak in favor of the idea
9 of creation of a subcommittee.

10 I'm very pleased that the discussion is moving
11 towards the idea of a public subcommittee. I have
12 talked with a number of agencies in the Central Valley,
13 and they are interested in an open and transparent
14 process.

15 While there has been opportunities over the
16 last several years for me to be at this podium and
17 debate with this Board the appropriate level of
18 indemnity, the reality is that it's always been very
19 project-specific, and it really never gets to the issue
20 of the best public policy.

21 Clearly, the best public policy is for the
22 State to have the protections it needs, or else you
23 wouldn't be asking for it. But the best public policy
24 is also to make sure these protections don't go so far
25 that no local agency wants to pursue a project.

1 So there's a balance. And I do think that a
2 public and open session where we can work through these
3 things will facilitate finding that balance.

4 I share Board Hodgkins' view that this is
5 probably two or three sessions, a session on education,
6 identifying the issues, maybe a session on coming
7 together and deciding what actually could work, with
8 reports back to this Board on exactly what's going on.

9 I do think there is a need for the policy.
10 Ms. Rie, I would agree that there's no need for the
11 policy if it's going the way I want it to go. But the
12 reality is that I have had clients that have to come up
13 here and not like the ad hoc nature, not be able to
14 plan for it, be in the position where they need the
15 permit that day and they're forced to accept it even
16 though they don't want it.

17 And until there is some certainty as to what's
18 required and there's a policy, or at least a framework
19 that guides the Board's deception -- excuse me.

20 (Laughter)

21 MR. SHAPIRO: I think Freud is watching.

22 PRESIDENT CARTER: That will be enough.

23 (Laughter)

24 BOARD MEMBER RIE: Mr. Shapiro?

25 MR. SHAPIRO: Yes.

1 BOARD MEMBER RIE: Can I ask you a question?

2 You're encouraging the formation of this
3 subcommittee. And if it turns out our Board adopts a
4 policy that we will not require cities and counties to
5 sign the Local Cooperation Agreement, I think you need
6 to understand that there is no guarantee that we will
7 remove that requirement from TRLIA's Local Cooperation
8 Agreement.

9 So it's not an automatic.

10 MR. SHAPIRO: Yes. To speak to that --

11 BOARD MEMBER RIE: And you need to understand
12 that.

13 MR. SHAPIRO: To speak to that issue: First,
14 I stand before you not only as TRLIA's general counsel
15 but representing many other agencies.

16 Secondly, TRLIA will have future permits, and
17 so there's always the hope that it would apply in the
18 future.

19 And third, I will fall back on the commitment
20 the Board made two months ago which is to consider --
21 not to revise -- but to consider revising that
22 requirement, and that's all we can ask.

23 The final point I wanted to make before I put
24 my foot in my mouth again is: We do believe that we
25 should schedule this as soon as possible. We have a

1 number of permits that are going to be issued this
2 year. If there are going to be two or three meetings,
3 ten-day requirements, do some work in between, our hope
4 would be the first meeting would be scheduled before
5 the Board's next meeting.

6 And if resources are required, I don't have
7 agencies that I think can fund state efforts, but I
8 have agencies who can probably provide meeting spaces,
9 who may be able to help with noticing. So my clients
10 are to some extent at your disposal.

11 Thank you.

12 PRESIDENT CARTER: Thank you. What's the
13 Board's pleasure here? We'll entertain a motion.

14 VICE-PRESIDENT HODGKINS: I would move that we
15 form a subcommittee, membership to include myself,
16 Emma, Teri, and John -- oh, no. Lady Bug, you raised
17 your hand.

18 SECRETARY DOHERTY: I'll come.

19 VICE-PRESIDENT HODGKINS: Yeah. And with
20 that, the rest of you are welcome any time. With the
21 idea of scheduling our first meeting as rapidly as we
22 can, sometime maybe the first week in February. We've
23 got to figure out when we have staff available.

24 PRESIDENT CARTER: Okay. We have a motion.
25 Is there a second?

1 BOARD MEMBER BROWN: Second.

2 PRESIDENT CARTER: We have a second. Any
3 further discussion? Okay.

4 So just to repeat the motion, the motion is to
5 form a subcommittee to develop policy regarding
6 indemnification requirements for joint powers
7 authorities to include Members Suarez, Hodgkins, Rie,
8 and Doherty. And the four of you will determine your
9 leader who will kind of spearhead this amongst
10 yourselves. And we have a second.

11 Any other discussion? Okay. Mr. Punia, would
12 you call the roll, please?

13 EXECUTIVE OFFICER PUNIA: Board Member Emma
14 Suarez?

15 BOARD MEMBER SUAREZ: Aye.

16 EXECUTIVE OFFICER PUNIA: Board Member Butch
17 Hodgkins?

18 VICE-PRESIDENT HODGKINS: Aye.

19 EXECUTIVE OFFICER PUNIA: Board Member Teri
20 Rie?

21 BOARD MEMBER RIE: Aye.

22 EXECUTIVE OFFICER PUNIA: Board Member John
23 Brown?

24 BOARD MEMBER BROWN: Aye.

25 EXECUTIVE OFFICER PUNIA: Board Member Lady

1 Bug?

2 SECRETARY DOHERTY: Aye.

3 EXECUTIVE OFFICER PUNIA: Board President Ben
4 Carter?

5 PRESIDENT CARTER: Aye. Motion carries
6 unanimously.

7 Item 2, 10.2: Consider establishing a
8 sub-committee to review the proposed Tier 2 amendments
9 to Title 23 of the California Code of Regulations.

10 EXECUTIVE OFFICER PUNIA: I think Dan was not
11 here at the last meeting, so I will take the lead and
12 ask Dan if you can open up the staff recommendation.

13 We had a meeting with Board Member Butch
14 Hodgkins and Emma Suarez and Debra Smith from Attorney
15 General's office. And staff and the Board Member
16 concluded that we don't need to form a formal
17 subcommittee to continue our -- establish -- continue
18 the Tier 2 amendments, that we can accomplish this task
19 under a working group, and that working group will
20 constitute two Board Members and the staff.

21 So staff recommends to form a task group
22 consisting of the following Board Members and staff
23 person to work on the Tier 2 amendments to Title 23 of
24 the California Code of Regulations: Board Member Emma
25 Suarez, Board Member Butch Hodgkins, Staff Engineer Dan

1 Fua, and Board Counsel Debra Smith.

2 PRESIDENT CARTER: Very good.

3 EXECUTIVE OFFICER PUNIA: Dan may have some --
4 anything else, Dan, you want to add?

5 SUPERVISING ENGINEER FUA: No, but I think I'd
6 like to turn it over to the Board Members, maybe Board
7 Member Suarez or Butch Hodgkins.

8 PRESIDENT CARTER: Emma, would you like to
9 comment?

10 BOARD MEMBER SUAREZ: Just briefly. We can
11 talk about the particulars of our conversation here or
12 later on during reports.

13 But in terms of schedule, which I think is
14 what most people would be interested, we had -- one of
15 the concerns we had or we discussed was to make sure
16 that due process considerations were taken care of. We
17 were just a small group versus a formal committee.

18 And after discussion and legal advice, we can
19 guarantee that we will take care of the due process
20 concerns that anybody might have.

21 With that in mind, we were thinking that
22 probably at the end of February, beginning of March, we
23 would probably have the first stakeholder meeting to
24 set out the outlines of what the Tier 2 regulations are
25 going to look like, or recommendations for changes.

1 And with the hoping that by that point we'll
2 have some draft language that we can share with the
3 public, basically some of the ideas we have, with
4 perhaps a second stakeholder meeting at the end of late
5 summer, early fall.

6 So -- and of course, there is also the formal
7 rule-making process that will give the public a lot of
8 process in terms of participation.

9 So that's -- and then -- no, that's all.

10 BOARD MEMBER RIE: Can I ask a question?

11 Mr. Tabor offered to provide free legal
12 analysis for the previous subcommittee. Is DWR also
13 going to provide the legal services for the Tier 2
14 regulations?

15 EXECUTIVE OFFICER PUNIA: I think that would
16 be good.

17 ASSISTANT CHIEF COUNSEL TABOR: We are
18 prepared to provide supplemental services to your
19 primary counsel, the Department of Justice.

20 BOARD MEMBER RIE: Great. And does our Board
21 have the budget and resources and the staff to hold
22 stakeholder meetings for this particular group?

23 EXECUTIVE OFFICER PUNIA: Again, there is no
24 money set aside for this. But we can squeeze from our
25 existing budget to conduct a couple of public

1 workshops.

2 BOARD MEMBER SUAREZ: I think that was one of
3 the considerations discussed when we talked about doing
4 a formal committee versus a task group. At least a
5 task group format allows us to be a little more cost
6 saving.

7 The real expenditure besides our staff time,
8 of course, is the need of some technical assistance in
9 the form of other DWR employee that's dedicated to us
10 to work to the technical issues or hiring a consultant.
11 And that's an issue that Mr. Punia was going to work
12 through, so.

13 But the task group format does allow us to
14 save some money.

15 BOARD MEMBER RIE: What about on the legal end
16 with the Department of Justice, those services? Deb
17 Smith's services? Do we have money set aside for her
18 assistance?

19 PRESIDENT CARTER: We do not have money set
20 aside other than the normal allocation for legal
21 assistance from the Department of Justice or the
22 Attorney General's office.

23 DEPUTY ATTORNEY GENERAL CAHILL: It's not
24 earmarked for particular tasks.

25 BOARD MEMBER RIE: Okay.

1 PRESIDENT CARTER: Any other questions? If
2 there are no objections from the Board, then I think
3 it's within my purview to go ahead and form the task
4 group. I don't think we have to have a vote for this
5 unless you want to have a vote. And we'll proceed as
6 recommended by staff.

7 Is there anybody that objects to that?

8 (No response)

9 PRESIDENT CARTER: Very good. We'll do it.
10 Thank you.

11 Item 11, West Sacramento Project. Consider
12 Resolution 08-21 to approve a feasibility cost-share
13 agreement among the Department of the Army, and the
14 Central Valley Flood Protection Board, and West
15 Sacramento Area Flood Control Association for a General
16 Reevaluation Report which includes a Project Management
17 Plan report that outlines and defines major tasks, task
18 management, schedule, and estimated costs for the
19 study.

20 Also a Local Feasibility Cost-Share Agreement
21 between the Board and West SAFCA to carry out the
22 nonfederal sponsor's responsibilities under the federal
23 cost-sharing agreement for the study.

24 Is Mr. Scobba here? Ms. Cahill, did you want
25 to --

1 DEPUTY ATTORNEY GENERAL CAHILL: Yes.

2 Actually, before we put Mr. Scobba to the
3 effort of making a presentation, I would like to inform
4 the Board that under the budget letter came out from
5 the Department of Finance on December 18th -- and
6 copies were given you to by e-mail, I think, earlier
7 this week and are in your supplemental materials this
8 morning -- all state agencies that have expenditure
9 control and oversight of general obligation bonds are
10 to cease authorizing any new grants or obligations for
11 bond projects including new phases for existing
12 projects.

13 This applies to disbursements under AB 55
14 which includes, I think, both Prop 84 and Prop 1E.

15 So I believe that under the Department of
16 Finance budget letter you are unable today to commit
17 funds to a new project. That would include these
18 Feasibility Cost Share Agreements which would commit
19 the Board to making payments to the Corps of Engineers.

20 And so what I would recommend is -- there is
21 an exception. Number 2 in the letter says:

22 Suspend all projects excluding those for
23 which Department of Finance authorizes
24 an exemption.

25 My understanding is that DWR has applied for

1 certain exemptions and/or could apply for an exemption
2 for this. But until there is one, I don't believe the
3 Board can legally enter into these agreements or
4 authorize them.

5 PRESIDENT CARTER: Okay.

6 Any discussion from the Board? Do we want to
7 go ahead and hear the staff report? At a minimum,
8 there are representatives from West Sacramento that
9 want to address the Board on this item before we make a
10 decision, but --

11 BOARD MEMBER SUAREZ: I have a quick question.

12 Do we have -- does this letter really apply to
13 us? We don't have authority to spend money. We
14 don't -- we could tell the world to spend money, and
15 nobody would listen to us. Isn't that correct?

16 SECRETARY DOHERTY: That's right. We could
17 say we like the project, but we don't have money. It's
18 not up to us.

19 DEPUTY ATTORNEY GENERAL CAHILL: You have the
20 authority to authorize the execution of the agreement
21 which obligates the State to pay moneys which will be
22 allocated from bond moneys.

23 PRESIDENT CARTER: So we commit the money.

24 DEPUTY ATTORNEY GENERAL CAHILL: You commit
25 the money by having your President or Executive Officer

1 execute the agreements.

2 I mean, you contractually obligate the State
3 to pay.

4 PRESIDENT CARTER: Right.

5 VICE-PRESIDENT HODGKINS: Based on my own
6 previous experience, part of the challenge for the
7 local sponsor is getting this agreement through the
8 state bureaucracy. And without it being approved by
9 this Board, it doesn't start to move to eventually be
10 approved by the Department of General Services.

11 I'm wondering if there is some way, in looking
12 at a potential waiver for the project on the part of
13 DWR, we could also ask the Department of General
14 Services if they would accept our approval of these
15 agreements with the understanding that when the
16 agreement gets to them, if this budget concern hasn't
17 been straightened out, they at least would review the
18 agreement, and it would be ready to be signed and moved
19 out as soon as it's possible to do that.

20 It used to take six weeks, at least, to get
21 through General Services. Is that still the case?

22 George?

23 EXECUTIVE OFFICER PUNIA: Yes. That's the
24 case. It will still take time.

25 VICE-PRESIDENT HODGKINS: Okay.

1 DEPUTY ATTORNEY GENERAL CAHILL: But in the
2 past, General Services has been unwilling to process an
3 agreement like this until it has been fully executed.

4 And so I think by authorizing execution of the
5 agreement you are authorizing the obligation for the
6 bond project.

7 BOARD MEMBER BROWN: Can't we authorize it
8 subject to available funding?

9 DEPUTY ATTORNEY GENERAL CAHILL: I don't think
10 so. That would be a present authorization for future
11 funding. But it's still future bond funding.

12 You are still now authorizing the expenditure
13 of bond funds, even though they are not going to be
14 spent till the future.

15 SECRETARY DOHERTY: Can we hear all the pros
16 and cons so that when the time comes we're ready to go?

17 DEPUTY ATTORNEY GENERAL CAHILL: You can, if
18 you want the staff presentation. You could do that.

19 BOARD MEMBER SUAREZ: I guess I'm a little
20 confused then. The clause 12 of the agreement says:

21 The agreement shall not be effective
22 until approved by the Department of
23 General Services.

24 DEPUTY ATTORNEY GENERAL CAHILL: There is no
25 such clause in the Corps agreement, the agreement with

1 the Corps.

2 PRESIDENT CARTER: Same question for
3 Mr. Scobba: If we were to postpone approving the cost
4 share agreements today, would that impact the project
5 schedule in your opinion?

6 MR. SCOBBA: I don't believe so, no.

7 PRESIDENT CARTER: It would not.

8 MR. SCOBBA: It would be close and contingent
9 upon the length of time it took DGS to approve the
10 agreement itself.

11 PRESIDENT CARTER: And so at what point do we
12 begin to feel uncomfortable not having the Board's
13 approval on these cost share agreements? At what point
14 in time?

15 MR. SCOBBA: I would estimate that the drop
16 dead would be the next Board meeting.

17 PRESIDENT CARTER: So February, end of
18 February?

19 MR. SCOBBA: Right.

20 PRESIDENT CARTER: Okay. With that, could we
21 ask Mr. Bessette, Michael Bessette -- is he still in
22 the audience? There we are.

23 If you'd introduce yourself.

24 MR. BESSETTE: Good afternoon, President
25 Carter, Members of the Board. Mike Bessette, Flood

1 Protection Manager for the City of West Sacramento.

2 I appreciate being here before you. Thank
3 you. I want to address this matter.

4 First of all, I'd like to thank the Board and
5 staff and DWR and the Army Corps for working with the
6 City to provide increased flood protection for the
7 City. We've been building strong, professional
8 relationships with everyone within the departments, and
9 it's been a real pleasure on my part to be dealing with
10 all the individuals here today.

11 We'd like to highlight that we have been
12 working on these agreements that are before you today,
13 and the Project Management Plan for the past nine
14 months to get it to the point where it is today. And
15 it's our belief that the action that is before you for
16 your consideration is simply to allow the President to
17 sign the cost share agreements.

18 And once those are signed, they would go to
19 the Department of General Services whereupon they would
20 wait until the State budget is passed. And we
21 understand the uncertainty that's occurring with the
22 State budget and what you're dealing with, so we
23 appreciate that.

24 But we do think that this action could take
25 place today, if you were to approve the cost share

1 agreements, and that it would keep the process moving
2 forward.

3 And once the State budget is passed, we
4 wouldn't have to reconvene at a future Board meeting.
5 And it could be a month delay or not. We just would
6 not like to take that chance, if possible.

7 So we're asking you to consider our request to
8 hear the State's presentation and to consider passing
9 the cost share agreements.

10 I'd also like to call Scott Shapiro to come up
11 and provide a little bit more input into this matter,
12 if that's okay.

13 PRESIDENT CARTER: That would be fine. I just
14 have one -- I just had a thought occur: Ms. Cahill, is
15 it within the confines of the budget letter and the law
16 if the Board were to authorize the President of the
17 Board to sign this upon approval of the budget letter
18 and removing the issues so that in essence there would
19 be no documents that would be executed until that
20 process was complete, but the Board has delegated the
21 authority to the President so that no new Board meeting
22 might have to be scheduled?

23 DEPUTY ATTORNEY GENERAL CAHILL: I don't
24 believe so. I believe by authorizing the President to
25 sign it, you have in fact made the commitment.

1 I would like to point out: It's not just a
2 function of the State budget passing; it's a function
3 of the State being able to sell bonds.

4 And the Department of Finance has made it
5 clear that it's not just that the State's bond -- that
6 the State's bond rating is poor now, but that the bond
7 markets themselves are in turmoil, and it may be
8 considerable time before we're able to sell bonds
9 again.

10 So it's not as simple as just if we get a
11 budget, which is not simple in itself.

12 You know, I -- I would be -- I think it might
13 be wise to ask staff to send these over in draft to the
14 Department of General Services and let them start
15 reviewing them. But I suspect they wouldn't do it. I
16 suspect they wouldn't do it.

17 But we could try that.

18 I would recommend that you put this over for a
19 month, see if there are results of exemption requests
20 from the Department of Finance, and perhaps send draft
21 forms to DGS and see if they would start to work on
22 them so it could shorten the time when the executed
23 ones arrived.

24 But I wouldn't recommend anything that would
25 be the final Board action.

1 PRESIDENT CARTER: Okay. Mr. Shapiro.

2 MR. SHAPIRO: Good afternoon again President
3 Carter, Members of the Board. Scott Shapiro as
4 co-program manager for West Sacramento Area Flood
5 Control Agency.

6 Before turning to the legal remarks, I did
7 want to just start by reiterating Mike Bessette's
8 comments of thanking your staff and DWR staff.

9 This has been really challenging for WSAFCA
10 over the last few days, and we really are coming
11 hand-in-hand with your staff and DWR staff, despite a
12 disagreement on exactly what the mechanisms are here,
13 and we want to thank them for their efforts.

14 I do disagree with Ms. Cahill's views. We
15 talked about it briefly earlier. I just want to
16 explain why it's an issue and then why I think the
17 Board can still proceed.

18 The simplest example is: If the budget is
19 resolved and the State can sell bonds in 21 days -- I
20 just randomly picked that -- Bagley-Keene would still
21 require ten days' notice to get it on the agenda. And
22 with all the administrative issues of you getting items
23 on your agenda, we could potentially be pushed to March
24 very easily; and Chris Scobba testified to you that
25 February really is the drop date deadline for us.

1 Let me turn to the legal issues and explain a
2 few things I believe is key on the agreement.

3 All of the Feasibility Cost Share Agreements
4 between Department of Water Resources or the Board and
5 the Corps always have a cover sheet. The cover sheet
6 is from Department of General Services, and it provides
7 General Services' approval.

8 So just as I think Mr. Hodgkins pointed out,
9 your approval, in my view, doesn't commit the State to
10 do anything because Department of General Services can
11 still say no -- can still say no, we're not going to
12 approve this agreement. This is just the first of a
13 series of steps.

14 But perhaps more important, if you take a look
15 at the agreements which are actually in your packet,
16 and in particular to article 13 of the Feasibility Cost
17 Share Agreement which is page 17 of that document which
18 itself is probably page 40 or 50 in your packet, it
19 says:

20 Nothing herein shall constitute nor be
21 deemed to constitute an obligation of
22 future appropriations by the Legislature
23 of the State of California

24 So in signing this, you're telling the federal
25 government: You're not guaranteeing they're ever going

1 to get paid. You might say then what's the value? Why
2 is this important to the local agencies?

3 Well, the reason it's important is back in the
4 Local Feasibility Cost Share Agreement, and if you look
5 at back on page 5 of 7 -- excuse me. If you look back
6 at page 3 of 7, paragraph 5, in the middle of the page.
7 And this again is the agreement between the locals and
8 you. It says:

9 In the event that the Board does not
10 secure any or all of the Board's share
11 of study cost during the term of the
12 agreement, WSAFCA may cover the
13 shortfall, including the cost of any
14 in-kind services, unless WSAFCA decides
15 to terminate the agreement --

16 In other words, if we say we don't want to pay
17 all the local share, we could terminate.

18 -- and the Board shall diligently pursue
19 securing its share of such study costs,
20 and when secured repay WSAFCA any
21 shortfall at that point.

22 So my view is the way these two agreements
23 work is: You're not promising anything to the Corps
24 other than we may one day get money.

25 But by continuing that agreement, and by

1 continuing the local agreement, you're saying to the
2 Corps: But our friends, WSAFCA here, may want to front
3 the money for a while. And they'll front it, and then
4 if we have money in the future, we'll repay them.

5 So it's our view that we need this to move
6 forward; because if the State, God forbid, is in a
7 crisis for six months, we don't want this to be held up
8 for six months.

9 And WSAFCA has the financial resources in the
10 interim to do in-kind services and to front the
11 nonfederal share.

12 So it's our belief the agreements are set up
13 explicitly to not commit you to anything; plus it's
14 going to go to General Services, and they're going to
15 actually do the final commitment to the extent there
16 even is one, and this whole process allows us to
17 actually provide the funding.

18 Thank you.

19 PRESIDENT CARTER: Questions? Comments?

20 BOARD MEMBER RIE: Ms. Cahill? Could you go
21 over the budget letter and who it's from and who it's
22 applicable to?

23 DEPUTY ATTORNEY GENERAL CAHILL: Okay.

24 The budget letter comes from the Department of
25 Finance, and it's directed to be forwarded to all

1 department facilities and construction and contract
2 managers. And it informs them that the Pooled Money
3 Investment Board voted in December to freeze all
4 disbursements from AB 55 loans, and that would include
5 our Prop 84 and 1E loans.

6 And the loan is from the Pooled Money
7 Investment. It's the way they sell bonds. Okay.

8 They took that action to preserve necessary
9 cash resources, to pay day-to-day operational needs of
10 the State for the balance of the fiscal year.

11 There is a bold, italics section called Agency
12 Liability that says:

13 Please be advised that any expenditure
14 not in compliance with this budget
15 letter could result in your department's
16 or agency's operating budget being
17 obligated to pay that expenditure.

18 I can assure you that your operating budget is
19 not going to be able to make \$1.25 million of -- if you
20 spend this money, you authorize it to be spent, and you
21 shouldn't.

22 Project suspension and freezes:
23 Effective immediately, all state
24 agencies that have expenditure and
25 oversight of general obligation and

1 lease revenue bonds shall, one, cease
2 authorizing any new grants or
3 obligations for bond projects including
4 new phases for existing projects;
5 suspend all projects --

6 And there are other agencies that are sending
7 out letters to contractors on existing projects,
8 telling them either they should stop or that if they
9 continue they may not be paid.

10 -- excluding those for which Department
11 of Finance authorizes an exemption based
12 on criteria described, unless the
13 contracting entity can continue with
14 nonstate funding sources, freeze all
15 disbursements on AB 55 loans that
16 weren't authorized or submitted to the
17 Controller prior to December 17, 2008.

18 And the last one is:

19 Instruct grant or loan recipients not to
20 enter any new construction agreements or
21 contracts.

22 And then it says:

23 State agencies are not permitted to
24 substitute cash in special funds for
25 previously approved AB 55 loans.

1 Utilizing cash in other special funds
2 that are in the PIMA would not comply
3 So there is a provision for exceptions.

4 Immediately report to your Department of
5 Finance Program Budget Manager any
6 project which, if suspended, will
7 subject the State to unacceptable legal
8 liability, fines, or penalties

9 I'm not sure this falls into that category,
10 although, if we had already entered it, it might.

11 And then it says there would be additional
12 information forthcoming. I'm not aware of additional
13 guidance that clarifies this more.

14 I know this has been subject of considerable
15 discussion within DWR. If you'll remember back from
16 the earlier DWR report, they have notified a number of
17 projects that the next phase can't go forward until
18 this gets resolved.

19 I think that you are entering obligations when
20 you sign these agreements. I don't think it's fair to
21 say these agreements commit you to nothing. I think
22 the Corps of Engineers would have the expectation that
23 we would pay -- the State would pay its share.

24 I think that section of the local agreement
25 basically says if you don't have it now, you'll keep

1 trying to get it, and as soon as you get it, you'll pay
2 it to us; and the "as soon as you get it, you'll pay it
3 to us" is a commitment. It's a commitment now of funds
4 in the future, and I think that would be against the
5 intent of this budget letter.

6 BOARD MEMBER RIE: Do we have an option to
7 apply to the Department of Finance for an exemption?

8 DEPUTY ATTORNEY GENERAL CAHILL: I think we
9 should. I think we have that option and in fact we
10 should do that.

11 BOARD MEMBER RIE: Would you recommend --

12 BOARD MEMBER BROWN: Or DWR on our behalf.

13 BOARD MEMBER RIE: Would you recommend that we
14 apply for the exception first, before we consider this
15 matter?

16 DEPUTY ATTORNEY GENERAL CAHILL: I would.
17 That would be my recommendation.

18 BOARD MEMBER RIE: Okay.

19 DEPUTY ATTORNEY GENERAL CAHILL: But I think
20 you should go ahead and put it on your agenda for next
21 month and get a status. Or either get the approval and
22 you go ahead, or you get a status -- I'm thinking in
23 the next month a lot of this is going to get resolved.

24 One way or the other. It might not be the way
25 we want it. But I think there will be more clarity in

1 another month.

2 PRESIDENT CARTER: Any other comments? No
3 comments -- no other comments from staff? DWR, do you
4 want to comment?

5 MR. SCOBBA: I'm sorry. I can't really
6 comment as to the legal adequacy. I mean, I've already
7 stated the potential impacts to schedule, and there is
8 a lot of variables involved with that.

9 But I think the next month, if we don't get
10 the agreements approved, that holds up the process of
11 starting the GRR and starting the study itself. We
12 can't do that until we have got an executed agreement.

13 PRESIDENT CARTER: Is this one of the projects
14 that DWR is working with Department of Finance to get
15 an exemption for?

16 MR. SCOBBA: I'm not privy to that
17 information.

18 PRESIDENT CARTER: Mr. Tabor or Mr. Qualley?

19 ASSISTANT CHIEF COUNSEL TABOR: I believe it
20 is. I'm virtually certain it is. I can't say
21 absolutely, but I'm virtually certain this is one of
22 the projects we've requested an exemption for, and we
23 have not heard back specifically whether or not -- we
24 know that none of our exemption requests have been
25 approved at this point.

1 We don't know what the schedule is, but we
2 certainly are pushing the Department of Finance to make
3 decisions on those exemptions.

4 PRESIDENT CARTER: Okay. So ladies and
5 gentlemen, it -- based on what I've heard so far, it
6 doesn't appear that there is a huge downside to
7 postponing it a month. We'll agendaize it for February
8 and address it at that point. And come February, we'll
9 have to make a decision one way or the other.

10 Are there any objections to doing that?

11 SECRETARY DOHERTY: That's fine.

12 PRESIDENT CARTER: Okay.

13 VICE-PRESIDENT HODGKINS: I do think we ought
14 to try to work with DWR in any way we can to find some
15 way where General Services would nod their head and
16 say, yeah, it's okay to approve that, and we accept the
17 fact that we are -- to at least get it through the
18 process.

19 PRESIDENT CARTER: Okay.

20 VICE-PRESIDENT HODGKINS: I'm volunteering, I
21 guess, to, since I live in Sacramento, participate if
22 there is any way I can help.

23 PRESIDENT CARTER: The Board or Board staff
24 are willing to help out in any way. If you request our
25 help, we'll help.

1 DIVISION CHIEF KOCH: Eric Koch, DWR.

2 Our intention is to continue to do that. We
3 have not only this project but a number of other
4 projects, including lower San Joaquin. Even though the
5 Board has made a quote/unquote commitment on that, we
6 still fall under the budget letter in terms of getting
7 approval through DGS.

8 So we are continuing to pursue those avenues
9 through DGS, and our commitment would be to come back
10 in February.

11 And hopefully by then we'll have a solid
12 answer for you, whether it's the right one or not. It
13 will be the one that we have to live by as of February.

14 PRESIDENT CARTER: Very good. So we will
15 postpone this, and we will agendaize it for February.

16 Mr. Qualley?

17 DIVISION OF FLOOD MANAGEMENT CHIEF QUALLEY: I
18 just want to make one more observation. One thing
19 we're trying to do and everybody is trying to do in
20 this really difficult process is to try to keep as many
21 processes as we can moving forward.

22 That's been brought up earlier, and certainly
23 as Mr. Scobba said, we are not going to second guess
24 the opinion of your counsel. That is the purview to
25 determine what the Board should or shouldn't do with

1 respect to the budget letter.

2 Just one comment I wanted to make, and that is
3 with respect to the type of agreements we have now, and
4 Mr. Shapiro alluded to that. Historically, on
5 Feasibility Cost Share Agreements, the agreements were
6 between the Board and the Corps, and then we had the
7 parallel agreements between the Board and local
8 agencies.

9 What we've started to do is to do joint
10 agreements to where both the State and the local agency
11 sign up as joint sponsors with the Corps, and then the
12 agreement between the State and locals, you know, talks
13 about the balancing of funds if it's necessary for one
14 or the other agency to move forward.

15 And again, Mr. Shapiro cited some language
16 from that.

17 Ironically enough, the reason that we moved in
18 that direction is because we had some of these
19 feasibility studies ready to move forward in the summer
20 of last year, and anticipating that we might have, you
21 know, a several-month delay in getting a budget put
22 together, that allowed flexibility that if the State
23 didn't have a budget in place that, you know, the
24 locals if they chose to, you know, could move forward
25 on their own funding to get these studies going and,

1 you know, with the idea -- and it would be a risk on
2 their part -- but with the idea that ultimately the
3 State would get a budget, get funding, and make
4 everything whole.

5 Of course, in that situation, we did not have
6 the existence of this very explicit budget letter that
7 your counsel quoted from, so that kind of throws a
8 whole 'nother wrinkle into this whole thing.

9 But that's just the comment I wanted to make
10 is that we, you know, going to this idea of joint
11 agreements to where actually both of the nonfederal
12 sponsors, the State and the local, really are
13 potentially signing up for, you know, for the whole --
14 potentially 100 percent of it if one or the other
15 agencies couldn't come through.

16 It was kind of designed for this kind of
17 situation, but without the onus of the budget letter
18 that was put forward.

19 So it -- just something for the Board to think
20 about. We certainly hope that we're not in this
21 situation come February. We're all hopeful that there
22 will be some sort of a resolution that allows things to
23 move forward within the next few weeks.

24 But if we are in the situation like this in
25 February, it might be an additional factor for the

1 Board to consider.

2 PRESIDENT CARTER: Thank you. Mr. Bessette,
3 Mr. Shapiro, thank you for coming and thank you for
4 your kinds words.

5 Let's move on. Item 12, informational
6 briefing. This is briefing by the US Army Corps of
7 Engineers regarding the Sacramento River Bank
8 Protection Project Phase II Supplemental Authorization
9 of Additional 80,000 Linear Feet under WRDA 2007.

10 Mr. Young.

11 WATER RESOURCES ENVIRONMENTAL SCIENTIST YOUNG:

12 President Carter, Board Members, Board staff,
13 my name is Kip Young. I am a staff environmental
14 scientist with the DWR Levee Repairs Program, mainly
15 working on the Sacramento River Bank Protection
16 Project.

17 I'm here to introduce Mike Dietl, US Army
18 Corps of Engineers. Mike was a fisheries biologist for
19 the Sacramento Bank Protection Project for many years,
20 and in October of last year his new role is project
21 manager for the future planning for the Sacramento
22 River Bank Protection Project for the Phase II
23 authorization of the additional 80,000 linear feet in
24 conjunction with the Phase III of Sac Bank.

25 A reminder that the Board has already -- the

1 Board as the nonfederal sponsor has already approved
2 authorization of the additional 80,000 linear feet of
3 phase 2 in January 2008 and also the LCA.

4 Board staff and the Corps are jointly
5 preparing a joint draft EIS and EIR at the end of the
6 month and have already set up four public meetings in
7 the month of February.

8 This information briefing is to inform the
9 Board of the -- of some of the issues for planning for
10 the future of Sac Bank.

11 And Mike.

12 US ARMY CORPS PROJECT MANAGER DIETL: Good
13 afternoon, Members of the Board and Mr. President. I'm
14 here -- I'm Mike Dietl representing the Project
15 Management Branch of the Sacramento District, and I'm
16 here to talk about the Sacramento River Bank Protection
17 Project and our additional authorization and WRDA 2007.

18 We're here to talk about the plan of study on
19 this project. It's a unique project that the Corps
20 has. It has a long-standing relationship with the
21 Board from 1960.

22 I'm going to go over the project overview, the
23 project purpose, its background, its status, the
24 authority, the plan of study, how we're going to
25 approach our plan of study, what kind of policy

1 compliance issues that we have and other issues that
2 relate to the project with its long history.

3 In front of you is a project map. The
4 Sacramento River Bank Protection Project is the primary
5 project to protect the entire Sacramento River flood
6 control project from erosion issues, stretching all the
7 way from essentially Hamilton City down to Collinsville
8 down in the Delta.

9 The project's purpose is intended to protect
10 the integrity of the Sacramento River flood control
11 project through a long-term bank protection and erosion
12 control project. It is a continuing construction
13 project that is cost-shared between the Board and the
14 Army Corps of Engineers with the Army Corps of
15 Engineers paying 75 percent of the project costs and
16 the Board paying 25 percent of the project costs.

17 The original authorization for Phase I was
18 established in 1960 and placed over 430,000 linear feet
19 of bank protection on the project as we know it. It
20 was completed 1975 and had no mitigation that was
21 associated with it.

22 The project was reauthorized in 1974 for
23 405,000 linear feet which only 13,000 linear feet
24 remain, and mitigation was authorized.

25 The point that mitigation was authorized

1 because there was a dispute between The Resource
2 Agencies, the Corps of Engineers, and the Reclamation
3 Board on the effects of the project, and there was a
4 subsequent settlement of mitigation and authorized
5 mitigation in the second phase.

6 I point out that there is only 13,000 linear
7 feet remaining. We plan to construct 9,000 linear feet
8 this summer which will only allow us to construct 6,000
9 linear feet in the summer of 2010.

10 We conduct a yearly erosion survey of the
11 Sacramento River Flood Control Project. In 2007, we
12 had 152,000 -- 152 sites, and in 2008, our survey was
13 completed in October with a draft report just being
14 delivered to the Corps last week.

15 Repair erosion sites occur annually. We
16 constructed eight sites in 2008 with 9,000 scheduled
17 for 2009.

18 Prior to the 1990s 10,000 feet were repaired
19 annually; and since the 2005-2006 season, we have been
20 on the pace historically of repairing 10,000 feet a
21 year, and we're continuing on that track, and we'd like
22 to keep on that track in the future.

23 We already have 80,000 feet of erosion sites
24 located throughout the system, located from up at Elder
25 Creek in the north all the way down to Cache Slough in

1 the south of the system with -- they seem to be groups
2 with the majority of them being in the Delta, and
3 particularly the Georgiana Slough.

4 We have a draft estimated cost of
5 approximately \$350 million for this project for the
6 80,000 feet.

7 We have a new authority. The new authority
8 presents us an opportunity and presents us a challenge.
9 Section 3031 of WRDA authorized the additional 80,000
10 feet from 405 to 485,000 feet.

11 We had implementation guidance issued in
12 June 2008 which requires us to do a post-authorization
13 decision document in accordance with Appendix G of ER
14 1105-2-100 of our planning guidance.

15 This is the challenge that we face. We have
16 to do an EIS and a post-authorization decision document
17 based on authority that was established in 1960 and
18 then again in 1974 and bringing it up to the Corps'
19 standards of a planning process.

20 Now the Corps' planning process is --
21 generally, I will take the case of West Sacramento of
22 developing projects that implement levels of protection
23 at the 100-year, 200-year project level. This is a
24 project that provides system integrity, and the
25 planning guidance was not necessarily designed for this

1 type of a project.

2 Well, our approach again is to have a
3 post-authorization decision document supported by an
4 EDR which is the least level of engineering
5 documentation required. We go from EDR to LRR to GRR.

6 We have to provide a system-wide benefit
7 analysis. The Sacramento River Bank Protection Project
8 has not necessarily had a comprehensive economic
9 analysis put forth to it such as other projects that
10 the Corps has in operation today.

11 We are going to do a programmatic EIR/EIS.
12 We're also going to have to do a programmatic real
13 estate plan. This morning, things were discussed about
14 boat docks. We increasingly see issues of
15 encroachments on boat docks in our project areas that
16 potentially lead to delays in construction of important
17 erosion control measures.

18 We would like to target division approval.
19 Headquarters has delegated division approval down to --
20 I mean has delegated decision approval down to
21 division, and we hope to have that ready by the
22 construction season of 2011.

23 Not having that approval by 2011 puts us into
24 a position of not having a comprehensive erosion
25 control program on the Sacramento River Flood Control

1 Project.

2 The only remaining items we would have as the
3 Corps authority that would cover the entire project
4 area would be PL84-99 and Section 14. And I believe
5 you are aware of the issues associated with PL84-99.

6 We would also like to start Phase III. We'd
7 like to start that in this fiscal year. We'd like to
8 also make that policy compliant and consider multiple
9 objectives.

10 We are going to pitch that we are actually
11 doing Phase III now while we're doing Phase II. I say
12 that because there are multiple stakeholders in the
13 valley, those that support flood control efforts and
14 those that support environmental restoration.

15 And this project has rocked over 80 percent of
16 the river, so there will be steep opposition from The
17 Resource Agencies to further implementing this project
18 as has been in the past.

19 So we have to balance those things and say we
20 are -- we are trying to make another Phase III or new
21 approach with a Phase III in terms of trying to balance
22 the environment while we're trying to balance flood
23 control.

24 And we are trying to take on some of those
25 efforts right now on under Phase II, and one of those

1 is a sediment study to determine how much erosion
2 control works we actually have to do for Phase III
3 right now. We can't predict 50 years into the future
4 without any type of scientific accuracy on what the
5 actual level of effort's going to be needed in the
6 future.

7 Well, we anticipate that we're going to have
8 some deviations in policy. There are several outlined
9 here, and there will be more as we go through the
10 process.

11 But on initial looks, we're not going to be
12 doing any plan formulation. We're going to do a
13 programmatic benefit analysis -- again, economics --
14 and we're going to have to ask for policy waivers for
15 both of those from the headquarters.

16 We're going to try and do a simplified risk
17 analysis in the terms of our economics. And the
18 project -- the project is different, again, in that it
19 has no 902 limit because we think that it is authorized
20 in feet rather than a dollar amount.

21 So it has no dollar cap. It just has a linear
22 foot cap, hence the 80,000 feet which is a little less
23 than the 20,000 -- a little less than the 20 percent
24 for the original authorization of 405,000 linear feet.

25 The real estate plan needs to be programmatic

1 in nature. We need to decide as a group, as a team,
2 how we're going to approach that. Typically we have
3 been doing things, constructing projects, on easements.
4 That has presented itself in certain problems.

5 We need to at least have the debate on how we
6 are going to acquire real estate for this project in
7 the future, and spell out how we will acquire real
8 estate in the future.

9 We have the issue of vegetation on levees. In
10 front of you is what you can see in the 2001 guidance
11 and the draft policy guidance from headquarters
12 associated with vegetation on levees, which essentially
13 says you maintain a 15 foot vegetation-free zone from
14 the toe of the levee, no vegetation on the levee, nor
15 on the crown of the levee.

16 BOARD MEMBER BROWN: Is this a new policy
17 that's just come into place?

18 US ARMY CORPS PROJECT MANAGER DIETL: No. The
19 schematic showed the policy of the Corps that was in
20 2001, and also shows what the policy -- the draft
21 policy of the Corps with the issue of vegetation on
22 levees currently.

23 We have not finalized our policy -- our draft
24 vegetation policy on levees as of yet.

25 The next slide shows you a depiction of the

1 1974 Chief of Engineers report to Congress which
2 authorized the project. It is in direct conflict with
3 the policy of the Corps of Engineers, and we need to
4 wrestle that.

5 The schematics will show that we are allowed
6 to leave vegetation on the levees, preserve vegetation,
7 plant vegetation in certain portions of the
8 cross-section of the levee. That is an issue that has
9 to be worked out through headquarters.

10 As you know, we have constructed many projects
11 over the last several years where we have planted
12 vegetation into the riprap to satisfy our environmental
13 requirements.

14 We have said as an organization of the
15 Sacramento District that this is a safe practice and it
16 is engineered into the project design.

17 We are currently working with the Engineering
18 Research Development Center out of Vicksburg. They
19 were out here this week, actually scouting out
20 locations to begin their investigations on the effect
21 of vegetation on levees.

22 We will also work as the project with the
23 Engineering Research Development Center to have an
24 influence on that policy.

25 There has been talk about variances on the --

1 from the policy as the State would propose that to the
2 Corps of Engineers and the district commander would
3 then sign off of it.

4 We are in the position that we have to develop
5 our own projects and essentially make our own variances
6 for our project. So we have the ability to commit our
7 funds under the Bank Protection Project to work with
8 the Board and work with Reclamation Districts in terms
9 of developing the information to be able to pass over
10 to them on how that would occur.

11 The overall approach is consistent with recent
12 Sacramento bank protection efforts to -- with
13 additional efforts to further maximize onsite
14 mitigations. We want to have all mitigation onsite.
15 We do not like to acquire land that is off site.

16 We want to mitigate off site when it's not
17 feasible, but we'd like to continue to maximize the
18 onsite designs, onsite mitigation.

19 And we'd like to consider a broader range of
20 onsite or offsite mitigation scenarios in the future
21 while planning and developing that for the third phase
22 because we'll be continually under pressure to either
23 develop a third phase or say, no, why is Sac Bank still
24 in existence while the State has the Central Valley
25 Flood Protection Plan in effect.

1 We'd like to consider the use of appropriate
2 federal, state, or private habitat enhancement
3 initiatives. These are essentially mitigation banks
4 are partnering with other initiatives that are going on
5 at the state or federal level to locate any offsite
6 mitigation.

7 We'd like to continue the use of the SAM with
8 supplemental analysis as needed. I'd like to go back
9 and describe at least what the SAM is. It's our
10 assessment tool that allowed us to respond effectively
11 to the flood emergencies in 2006.

12 Just a basic baseline picture of the natural
13 versus the armored banks in the system to give you an
14 idea of what your baseline condition is and what we may
15 be -- well, we will be dealing with in the future.

16 Essentially, the system has 50 percent rock
17 above Colusa, 50 to 75 percent to Sacramento, and
18 greater than 80 percent below Sacramento.

19 Other issues, I've mentioned that we have the
20 vegetation on levees issue which presents us in a very
21 difficult position between our own headquarters policy,
22 getting sites on the ground, and then the issues that
23 we have to get projects permitted with the Resource
24 Agencies.

25 In 2001, we received a draft jeopardy opinion

1 for this project which stalled our work efforts for
2 several years. We were able to move on through that
3 and work collaboratively with the Resource Agencies
4 over the last several years, and we have the ability to
5 mitigate on and off site.

6 Should our ability to take -- to not
7 mitigate -- to mitigate onsite be taken away, it's
8 going to leave us less options, and it's going to make
9 it a lot more difficult and expensive of a project to
10 construct actual bank protection projects on the
11 Sacramento River.

12 Species recovery plans are in place. The
13 National Marine Fisheries Service is developing a plan
14 for the various listed salmonids that is going to rank
15 riparian vegetation as one of the number one
16 constituents for riparian -- for species recovery.

17 This project directly affects that, and gives
18 them an ability to use their documentation in place to
19 change projects.

20 O&M practices and manuals. We have
21 constructed approximately 40 sites since 2001. We have
22 not turned over one of these sites to the Board for
23 maintenance at this point.

24 We're going to use that opportunity to develop
25 the vegetation variance and to turn over here because

1 we suspect that there may be an issue of turning sites
2 over that we have planted that are not necessarily in
3 accordance with the Corps' headquarters policy.

4 We're going to improve our mitigation site
5 inventory and monitoring. Over the last 40 years,
6 we've spent considerable amounts of money and do not
7 necessarily have a good idea of where we have spent and
8 put all this land. So we'll go out and develop that
9 because we will have to eventually do a cumulative
10 impact analysis for the valley.

11 Coordination with other programs. We'll be --
12 I will be briefing this to the Central Valley Flood
13 Protection Plan on Tuesday, coordinating with State
14 Plan of Flood Control, coordinating with the elements,
15 the remaining elements of the old comprehensive study,
16 to coordinate with them, the American River Watershed
17 Common Features GRR, the West Sacramento GRR, the Yuba
18 River, Sutter Feasibility Study, and Levee
19 Collaborative Group. Levee Collaborative Group was
20 actually briefed in November on this tissue.

21 Stakeholder feedback. We have already
22 reached -- we have already received stakeholder
23 feedback from five agencies, and two agencies and NGOs
24 remain.

25 Key issues to date have been reconciliation

1 with the vegetation policy and with species recovery
2 efforts. There has been the desire for a system-wide
3 approach to avoid habitat fragmentation to
4 consideration of alternative designs. These are
5 designs that are not rock, not necessarily setback, but
6 of softer, more environmentally friendly designs.

7 In general, the constituents preferred onsite
8 mitigation prior to consideration of offsite. They
9 want us to coordinate with other regional efforts and
10 continue in the spirit of collaboration which we
11 believe we can.

12 Coordination with other regional efforts, and
13 we hoped to brief -- it's why I'm here today to brief
14 you to inform where we're going out over the next two
15 years.

16 With that, I hope I've stimulated some kind of
17 thought on the issue and can see -- you can see where
18 the potential pitfalls of where we may go over the next
19 two years in developing the issue and getting through
20 some policy compliance issues through the Corps of
21 Engineers also in dealing with the Resource Agencies in
22 getting a 350 or \$400 million project together which is
23 potentially the stopgap measure between a Phase III of
24 Sac Bank or another State-approved plan.

25 PRESIDENT CARTER: Thank you very much.

1 Mr. Hodgkins?

2 VICE-PRESIDENT HODGKINS: Mike, you look
3 different than the last time I saw you. I don't think
4 I've ever seen you in a suit.

5 (Laughter)

6 VICE-PRESIDENT HODGKINS: Looking roughly at
7 the cost here, the 350 million and 85,000 feet is about
8 \$20 million a mile. Little more than that. Could you
9 do setback levees under this?

10 US ARMY CORPS PROJECT MANAGER DIETL: The
11 authority provides for setback levees.

12 VICE-PRESIDENT HODGKINS: Okay.

13 US ARMY CORPS PROJECT MANAGER DIETL: The --
14 if I can use an example of this morning in Cache Creek,
15 the authority itself -- we were talking about cost, and
16 Sac Bank is supposed to be the least cost alternative.
17 Cache Creek, the setback levee is the least cost
18 alternative.

19 The Board has the choice to pick a rock
20 alternative. However, they will -- the Board would
21 have to pay 100 percent of the difference of that cost.

22 So there is the ability for setback levees.
23 The project is a remedial bank protection project. I
24 use the word "remedial" because people like to think of
25 it as an operations and maintenance promise. It's not.

1 If the Corps and the Board went out in the
2 current day and settled this with all the policies in
3 hand and we went out to design a project, we would go
4 out, and we'd design riprap or bank protection measures
5 in the system or set back the levees where we wouldn't
6 have erosion -- erosion cost.

7 We would have to then somehow incorporate into
8 that -- into the Sacramento River Flood Control Project
9 the entire operations and maintenance cost to establish
10 a valid B/C ratio.

11 VICE-PRESIDENT HODGKINS: Okay. And the fact
12 that you have to do the study means this has to be a
13 cost-effective project?

14 US ARMY CORPS PROJECT MANAGER DIETL: Yes.

15 And that is the biggest challenge, and we have
16 been discussing things -- not want to necessarily
17 discuss in detail the economics on that issue because
18 it's still evolving at this point and will be a very
19 interesting journey, and we will most likely need
20 variances.

21 But we also need to think proactively how
22 we're going to fix the system in the future. I think
23 any of this would -- is applicable to how the flood
24 protection plan would proceed if Corps support is
25 wanted on some of those projects that may come out in

1 the future.

2 VICE-PRESIDENT HODGKINS: All right. Thank
3 you.

4 PRESIDENT CARTER: Questions?

5 BOARD MEMBER SUAREZ: I have one.

6 How does this program fit in with the work of
7 the National Levee Safety Group?

8 US ARMY CORPS PROJECT MANAGER DIETL: It does
9 not. Of course, we coordinate efforts, and I
10 understand what's going on with the levee safety group.
11 We --

12 BOARD MEMBER SUAREZ: Would their report
13 include the description of your project, the report
14 they're preparing for Congress, which I guess is an
15 assessment of how things are?

16 US ARMY CORPS PROJECT MANAGER DIETL: I would
17 sure hope they would pick -- include this project. I'm
18 not aware of the details of what's in that in terms of
19 Sacramento River Bank Protection.

20 But it is a key project on the valley floor
21 protecting the flood control project. And we've been
22 in partnership as well with the Debris Commission since
23 the project -- the flood control project was initiated.

24 Now, Phase III would -- it opens the door to
25 do many different things. I failed to mention that. I

1 went on the ecosystem restoration, but if you wanted to
2 redo Sac Bank into a new phase, I would think that you
3 would include seepage as one of the functions in that
4 phase because in the 1960s and 1974 we did not know
5 what we know today about seepage.

6 Also, this is a project that does not increase
7 the level of flood protection. It only protects the
8 project and reduces residual risk, but it does not
9 address the seepage issues.

10 If we wanted something -- if we wanted a
11 construction authority, we'd want something like this,
12 not necessarily increase the level of protection but to
13 make levees whole and sound and bring them up to modern
14 engineering standards.

15 PRESIDENT CARTER: Any questions?

16 BOARD MEMBER BROWN: In your studies to
17 analyze the requirements for better flood control
18 protection, have you given any consideration or is
19 there any consideration given to regulation of the
20 stream flows themselves, detention, retention dam, so
21 to speak?

22 US ARMY CORPS PROJECT MANAGER DIETL: Not on
23 this phase. We could theoretically do that. But what
24 you're doing is opening this up into a GRR in the
25 system.

1 I'd recommend that you'd want to minimize
2 those things at this point and focus that onto a Phase
3 III. Because you're essentially opening a whole
4 reconfiguration -- opening up -- what the Central
5 Valley Flood Protection Plan, I believe, is doing is
6 you're opening up and looking at all the potential
7 possibilities again in one step. And we did look at a
8 little bit of that in the comprehensive study.

9 What we need to do is focus on this 80,000
10 feet being the stopgap measure before we -- before
11 those other pieces are in place and that we have the
12 ability to respond in some kind of quick manner and
13 steady rate applying erosion fixes to damaged sections
14 of the flood control project.

15 BOARD MEMBER BROWN: So all your flood control
16 protection really is in conveyance then.

17 US ARMY CORPS PROJECT MANAGER DIETL: Under
18 this project, yes.

19 BOARD MEMBER BROWN: Is there another project
20 going on?

21 US ARMY CORPS PROJECT MANAGER DIETL: Well,
22 we, we, we -- the Corps has many different projects.
23 One of those we just talked about --

24 BOARD MEMBER BROWN: For flood control in the
25 Sacramento or Central Valley?

1 US ARMY CORPS PROJECT MANAGER DIETL: We have
2 the lower American, we have Folsom Dam improvements
3 going on. We have Common Features. We have West
4 Sacramento. We have Systems Evaluation, Mid Valley, a
5 number of different projects where the Corps can
6 support projects.

7 But those are generally limited to increasing
8 flood protection in terms of a year -- to a level of
9 100 to 200-year level of protection, and they're
10 limited in geographic scope while this can be applied
11 anywhere within the overall project area.

12 BOARD MEMBER BROWN: I really compliment you
13 on that Folsom Dam project. That's a good design, and
14 it's coming to fruition too.

15 US ARMY CORPS PROJECT MANAGER DIETL: Yeah.

16 PRESIDENT CARTER: Questions?

17 Mr. Dietl, going back to your background slide
18 where you were talking about authorization of the
19 project in '60 and '74: You -- if I heard you
20 correctly, you said it was authorized out of a dispute?
21 Could you --

22 US ARMY CORPS PROJECT MANAGER DIETL: Oh, I --
23 the mitigation was authorized out of a dispute.

24 PRESIDENT CARTER: Mitigation for?

25 US ARMY CORPS PROJECT MANAGER DIETL: Fish and

1 Wildlife impacts. There was no mitigation in the 1960
2 authorization, and Fish and Wildlife came to the Corps
3 and there had to be a Congressional resolution between
4 a Fish and Wildlife suggested number and a Board and
5 Corps suggested number for the amount of impacts that
6 the 430,000 linear feet had on the system.

7 PRESIDENT CARTER: So what this project is all
8 about is trying to armor the levee and protect the
9 levee from erosion.

10 Is that considered a design issue of the
11 system? I mean, is that -- does that -- are we doing
12 this because the system is doing things other than what
13 we expected when we designed it?

14 US ARMY CORPS PROJECT MANAGER DIETL: The word
15 in the authorization is remedial.

16 PRESIDENT CARTER: What does that mean?

17 US ARMY CORPS PROJECT MANAGER DIETL: As I
18 have looked it up, it means in general what you said:
19 Fixing what should have been fixed had it been designed
20 originally.

21 PRESIDENT CARTER: So we're trying to correct
22 design issues, original design issues?

23 US ARMY CORPS PROJECT MANAGER DIETL: Right.
24 And if I can expand on that, we -- in thinking greatly
25 on how to deal with these policy issues. This is not

1 normally what we do.

2 Now, only on one other project that I know of
3 in the country semi acts like this bank protection
4 project, which is the Mississippi River and Tributaries
5 Project which is an outstanding Corps authorization.

6 And both the Central Valley Flood Protection
7 Plan and the Mississippi River and Tributaries Project
8 were both authorized in the early part of the century.
9 And they do share that connection, and they also share
10 the connection between the commanders of the Corps at
11 the time that developed the Central Valley Flood
12 Protection Project went on to develop the Mississippi
13 River and Tributaries Project.

14 PRESIDENT CARTER: Okay. And then turning
15 further on, on your slides on the vegetation on the
16 levees, you mentioned there needs to be reconciliation
17 between the Corps' standard which is, according to your
18 picture, a bare levee versus what the next slide -- is
19 that a depiction of a different standard or what exists
20 today?

21 US ARMY CORPS PROJECT MANAGER DIETL: This is
22 the depiction of the standard that was put in the Chief
23 of Engineers' report in 1974 that authorized the second
24 phase of the bank protection project.

25 My understanding of the history in going

1 through the documents that this issue on vegetation on
2 levees has been around for a very long time, and this
3 is where the compromises that were made in this
4 authorization on the second phase, because it goes back
5 to the local reclamation districts wanting to have
6 support from the Flood Protection Board to pay for the
7 vegetation that they had on their levees. They wanted
8 to be essentially indemnified from the risk that it
9 had.

10 PRESIDENT CARTER: I don't think that sank in,
11 but -- so this is the standard that the Chief of
12 Engineers showed Congress in terms of getting
13 reauthorization of the project?

14 US ARMY CORPS PROJECT MANAGER DIETL: Correct.

15 PRESIDENT CARTER: And this is a standard
16 essentially recognizing that the vegetation exists, has
17 been there for some time?

18 US ARMY CORPS PROJECT MANAGER DIETL: I
19 wouldn't say recognizing it from there for some time.

20 It comes out from the dispute between the
21 Resource Agencies and the activities that the bank
22 protection had of just going down the river, clearing
23 and grubbing and placing rock, and there was an outcry
24 for it, and then the requirements for mitigation.

25 There is also the potential problem of the

1 Corps not wanting to pay the cost for the mitigation
2 based on the requirements of the Operations and
3 Maintenance Manual.

4 PRESIDENT CARTER: Does this represent a
5 potential vision of what the system might -- the steady
6 state of the system might look like from the Corps'
7 perspective?

8 US ARMY CORPS PROJECT MANAGER DIETL: No, I
9 wouldn't go there. Depicting that as the conflict
10 between the authorization and the Corps' policy and
11 what we have implemented. It's not necessarily the
12 vision.

13 PRESIDENT CARTER: So this is something --
14 this conflict is something that the Corps is trying to
15 resolve internally?

16 US ARMY CORPS PROJECT MANAGER DIETL: Yes. We
17 will have to go down this road to reconcile this policy
18 with -- the policy that is in hand in terms of the
19 vegetation on levees and the draft vegetation with this
20 authorization.

21 PRESIDENT CARTER: Where does that road go in
22 terms of -- I mean, does that go from the district to
23 the division to the headquarters? How --

24 US ARMY CORPS PROJECT MANAGER DIETL: Yes.

25 PRESIDENT CARTER: Okay.

1 US ARMY CORPS PROJECT MANAGER DIETL: Exactly.

2 PRESIDENT CARTER: Where are you on that road?

3 US ARMY CORPS PROJECT MANAGER DIETL: Just
4 beginning.

5 PRESIDENT CARTER: Okay. All right. Thank
6 you.

7 BOARD MEMBER SUAREZ: Just so I understand,
8 this is what Congress agreed to pay for?

9 US ARMY CORPS PROJECT MANAGER DIETL: This is
10 the four schematics within the House document that
11 authorized the project.

12 BOARD MEMBER SUAREZ: So this is what Congress
13 thought they were going to get, and it conflicts with
14 your standard?

15 US ARMY CORPS PROJECT MANAGER DIETL: Yes. It
16 is in conflict, and we need to resolve that.

17 And the question is what is -- under the bank
18 protection -- this does not say -- this isn't for the
19 flood control project. This is just how the project
20 itself is going to implement a project when it comes to
21 a certain site.

22 It's not the Operation and Maintenance Manual
23 for the 1950s -- 1957 Operation Manual. I do not want
24 to give you that impression. This is how we are going
25 to implement it on a site-by-site basis when we have

1 the project.

2 PRESIDENT CARTER: So are those mature trees
3 on there, are they from existing or is that what's
4 expected from plantings as they reach maturity?

5 US ARMY CORPS PROJECT MANAGER DIETL: It's
6 both the -- it's the preservation of existing
7 vegetation that is feasible.

8 PRESIDENT CARTER: Okay.

9 US ARMY CORPS PROJECT MANAGER DIETL: And it
10 also shows certain areas where you can plant. Where
11 you can plant is in direct conflict with the 15-foot
12 zone.

13 PRESIDENT CARTER: Okay. Well, the reason I
14 ask is that we've been -- the California Levee
15 Roundtable has been having a lot of discussions
16 recently just about this very issue and what's
17 appropriate and what's not. So I'm trying to get
18 another perspective from the Corps.

19 US ARMY CORPS PROJECT MANAGER DIETL: I
20 understand. I also provided Ms. Finch a copy of the
21 authorization, so your staff has that available.

22 PRESIDENT CARTER: Great. Thank you.

23 Any other questions?

24 VICE-PRESIDENT HODGKINS: Mike, this picture
25 is in the 2007 authorization?

1 US ARMY CORPS PROJECT MANAGER DIETL: No. It
2 is in the 1974 authorization.

3 VICE-PRESIDENT HODGKINS: 1974. Thank you. I
4 just wanted to be sure I understood that.

5 PRESIDENT CARTER: Any other questions? Thank
6 you very much.

7 US ARMY CORPS PROJECT MANAGER DIETL: One
8 final comment. I really appreciate being able to
9 present to the Board, and hopefully we can get back to
10 you in two years with a successful project and continue
11 on.

12 PRESIDENT CARTER: Thank you.

13 US ARMY CORPS PROJECT MANAGER DIETL: Thank
14 you.

15 BOARD MEMBER BROWN: And a clarification as to
16 river bank protection.

17 PRESIDENT CARTER: All right. We're on to
18 Item 13, Board Comments and Task Leader Reports. We'll
19 go down the table.

20 Mr. Brown, do you have anything to report?

21 BOARD MEMBER BROWN: Nothing new,
22 Mr. Chairman.

23 PRESIDENT CARTER: Ms. Doherty?

24 SECRETARY DOHERTY: I went to a hearing, and
25 where they did a three-dimensional modeling just below

1 the Fremont Weir. And just as a point of information,
2 the three-dimensional modeling was only \$150,000 not
3 \$500,000.

4 PRESIDENT CARTER: Is that three-dimensional
5 or two-dimensional?

6 SECRETARY DOHERTY: It was three-dimensional.
7 Three.

8 PRESIDENT CARTER: Wow.

9 SECRETARY DOHERTY: Yeah. And somebody out of
10 San Francisco, this is the Wildlands Group.

11 BOARD MEMBER RIE: Philip Williams &
12 Associates?

13 SECRETARY DOHERTY: Pardon?

14 BOARD MEMBER RIE: Philip Williams &
15 Associates?

16 SECRETARY DOHERTY: Yes. Philip Williams &
17 Associates.

18 But the thing that concerned me was this
19 group, Wildlands, went to the Corps and Mr. Sander was
20 here today and I should have just gone out there and
21 asked him.

22 But the figures coming from the Corps don't
23 seem to coincide with everybody else's figures, and
24 they agree that I guess it's their equipment that's
25 obsolete or outmoded.

1 So at what point are we going to ask the Corps
2 to get with the program and get their stuff working the
3 way it should be working so that everybody comes out
4 with the same answers? And that is a concern for me.

5 So anyway, but there is a plethora of groups
6 out there. This Wildlands has an umbrella bank for
7 credits; so if you need some credits, you can tap into
8 their umbrella bank.

9 Then the next thing I wanted to know is, your
10 Roundtable, is it printed yet? Because I attend
11 meetings that restore riverine habitat. Now are they
12 doing things that are wrong? And is this going to be
13 allowed to continue?

14 So I think that we need to have some idea
15 about where you guys stand on that.

16 PRESIDENT CARTER: I'll bring that up in a
17 minute. Teri?

18 BOARD MEMBER RIE: I don't have anything to
19 report, but I was wondering if it's okay to attend the
20 briefing for Colonel Chapman in Stockton on
21 January 29th? We discussed that last month, and I
22 think legal counsel was going to look into the
23 possibility of more than one Board Member attending
24 that.

25 EXECUTIVE OFFICER PUNIA: Debra Smith looked

1 into that, and she concluded there was two phases of
2 that. One was the ceremony, signing ceremony, and the
3 second was the tour.

4 Debra's conclusion is any -- all the Board
5 Members can participate in the public signing ceremony;
6 but on the tour, the recommendation is that we should
7 limit to two members' participation.

8 BOARD MEMBER RIE: Okay. So I may attend
9 that.

10 And also, I believe it was Monday Jay Punia
11 forwarded a copy of the letter of violation for Three
12 Rivers sent to Mr. Brunner for a mining violation
13 associated with the Feather River setback levee.

14 So I didn't know if that was publicly
15 available, and I do have a copy of it, and I just
16 wanted to report that in case I needed for ex parte
17 purposes.

18 PRESIDENT CARTER: Mr. Hodgkins?

19 VICE-PRESIDENT HODGKINS: I'm going to let you
20 report on discussions on encroachments, and I think two
21 things.

22 I mentioned that I went to the seminar put on
23 by Department of Conservation on the Williamson Act and
24 found it incredibly interesting. It's a very complex
25 Act, and understanding its ramifications when you get

1 involved with property acquisition is important.

2 I also continue to work with the Lower Yolo
3 Bypass Planning Forum. I sent out yesterday to Board
4 Members and I think staff, although I ought to probably
5 check my distribution list, a summary of the
6 conservation of -- the Bay Delta Conservation Plan and
7 gave you some references there to the proposed
8 modification of the Fremont Weir.

9 There's a real effort on the part of the Bay
10 Delta Conservation people to work through the planning
11 forum to see if they can understand and address the
12 issues associated with more frequent flooding of ag
13 land in the bypass. And I think that's a good thing
14 because we have people at the table in the planning
15 forum who are able to articulate those matters very,
16 very well.

17 SECRETARY DOHERTY: More what of ag land?

18 VICE-PRESIDENT HODGKINS: More frequent
19 flooding. Part of the conservation --

20 SECRETARY DOHERTY: I didn't hear what you
21 said.

22 VICE-PRESIDENT HODGKINS: -- plan is to put --
23 to fundamentally flood about 20,000 acres of the bypass
24 for 90 days in late winter and early spring because of
25 the benefits that come from the habitat that's created

1 when the bypass is flooded and the importance of that
2 for fish.

3 So it's an interesting project. It doesn't
4 necessarily have to be a project that compromises in
5 any way flood protection. It's a matter of working out
6 the details, and I'm looking forward to hearing more
7 about it and finding out more about it as we go ahead.

8 Eventually, I understand they have to get a
9 permit from this Board, but they are a ways away from
10 even filing for that because they're at a recon level
11 in their analysis, not predesign, so they have a lot of
12 work to do.

13 I think that's the two primary things that I
14 was involved in.

15 SECRETARY DOHERTY: Butch, did you say
16 anything about water sales?

17 VICE-PRESIDENT HODGKINS: About what?

18 SECRETARY DOHERTY: Water sales.

19 VICE-PRESIDENT HODGKINS: No.

20 SECRETARY DOHERTY: It was in the paper.

21 VICE-PRESIDENT HODGKINS: I missed it. Yeah.

22 SECRETARY DOHERTY: Okay.

23 PRESIDENT CARTER: Emma?

24 BOARD MEMBER SUAREZ: Thank you.

25 In addition to the discussion we had earlier

1 regarding the work of the Tier 2 task group, or task
2 force, I just wanted to get on, Ben, your radar screen
3 and Jay, your radar screen.

4 There is two issues we need to resolve
5 probably in the next week, if possible, the issue of
6 staffing, the technical support, and when do we want to
7 have a rough set of draft language of the next set of
8 regulations.

9 Clearly we're going to go through the
10 standards section and clean that up, and I'd like to
11 start working on the mechanics of that.

12 So I'd like to get that -- perhaps in the next
13 week or two, have a discussion, get some decisions made
14 on that.

15 PRESIDENT CARTER: Okay.

16 I had a pretty busy week. We had -- Jay and I
17 had dinner with General Temple who is the new Director
18 of Civil Works for the US Army Corps of Engineers at
19 Corps headquarters. Very nice gentleman. If you
20 haven't received his bio, we will forward that to you.

21 Most of his experience has been combat
22 exercise, but he is a very pragmatic and practical
23 person, and he is replacing -- did I say he's replacing
24 General Riley back in Washington, DC.

25 And then we -- in relation to the Corps,

1 Butch, Jay, myself, and Gary met with the Corps, I
2 mentioned earlier this morning, on Wednesday to discuss
3 the permit backlog.

4 They -- I think we're beginning to get through
5 to them. They are making some headway, and they've
6 made some fairly significant commitments to devote some
7 resources to, number one, clear the backlog we have on
8 our sheet in relatively short order, and then try and
9 implement steps to be sure that the backlog doesn't
10 build anymore.

11 And that includes they have added one new
12 person. They are reallocating -- so that would be a
13 new staff person. They are kind of reallocating
14 existing staff to focus more time on encroachment
15 permit processing.

16 So they do recognize that there are issues.
17 We are also working with them with regard to that in
18 terms of, one, giving them more notice which we told
19 you before. We're giving them sixty days' notice for
20 permits scheduled to be coming before the Board.

21 And also reformatting the -- and repackaging
22 the permits so that it's easier for them to review them
23 and access them and route them. And hopefully, that
24 will speed the process through the Corps review.

25 So we're -- that was a very good meeting, I

1 thought.

2 BOARD MEMBER BROWN: I'm really glad you did
3 that because that's been a lot of pressure put on all
4 of us. Just that one Meridian project, they claimed
5 about \$400,000 lost because of delays.

6 Good job, Ben.

7 PRESIDENT CARTER: I hope we don't run into
8 that situation again.

9 Prior to that, Jay, Butch, and Ginny and I met
10 with our new assembly ex officio member, Assemblyman
11 Jared Huffman. And the purpose of the meeting was
12 basically a meet-and-greet, introduce ourselves to him,
13 get a chance to meet him, orient him in terms of our
14 perspective on the Board's role, find out if he had any
15 specific issues or items that he wanted to bring before
16 the Board.

17 He's very bright, very articulate, fairly well
18 informed; and I didn't get a sense -- and maybe one of
19 you, Butch or Jay or Ginny, had a sense as to how much
20 he was going to participate. I don't know.

21 He -- the one thing -- he did ask some good
22 questions, and the one thing he did express an interest
23 in is trying to have more multiple benefit projects,
24 particularly from an environmental perspective, coming
25 through the Board.

1 We met with DWR executive on Wednesday, and we
2 discussed the staffing issue with regard to the Tier 2
3 regulations and just kind of expressing our intent to
4 hopefully source some expertise, technical expertise,
5 from DWR. Asked Mr. Qualley and others around the
6 table if they knew of an engineer there on staff that
7 might be able to help, and we're still looking at this
8 point.

9 Obviously, they're pretty busy, as everyone
10 else is.

11 And let's see.

12 We discussed a number of other things. Maybe
13 Jay -- which escape my memory at this point. But Jay,
14 if you could bring them up as part of your report.

15 Then prior to that, we had the levee
16 Roundtable meeting. This was a meeting where we were
17 trying to get some agreement around the table on the
18 specific semantics and language with regard to defining
19 the commitments of the various players around the
20 table.

21 And there was a very, very -- probably one of
22 the most open and frank discussions amongst the parties
23 occurred during that meeting that we have had; and I
24 think we made a lot of progress. There is still -- we
25 all agree that we're 99 percent of the way there, and

1 we hope to have a final document by -- we have a
2 February 27th meeting. So hopefully we walk out of
3 that meeting with a document that the Roundtable
4 blesses and then begins to run up the flagpoles in
5 their respective agencies and --

6 BOARD MEMBER BROWN: An agreement for what?

7 PRESIDENT CARTER: An agreement on what the
8 language in the framework says. And the framework
9 really outlines a plan for levee maintenance, okay?
10 And a high level schedule and level of commitments in
11 terms of doing that maintenance.

12 There is an interim standard, maintenance
13 standard, and then there'll be a long-term standard.
14 And there are discussions about the research that's
15 going to go on to support what the ultimate long-term
16 standard is.

17 Right now, there's a Corps standard which you
18 saw up there which is basically a naked levee. In
19 general, as Mr. Dietl said, the Resources Agencies
20 don't like that.

21 The State maintaining agencies don't like that
22 from the standpoint of trying to make our levees look
23 like that from a cost and mitigation perspective.

24 So that's a point of discussion at this point.
25 So it is our hope that perhaps we'll be able to roll

1 out, publicly roll out, the framework at the March
2 Board meeting or perhaps the April Board meeting.

3 So prior to that, we'll be also expanding the
4 audience that sees that, in particular the NGOs that
5 work with the Resource Agencies and the local
6 maintaining agencies that aren't sitting at the table
7 right now. We only have SAFCA and Mike Hardesty's
8 Reclamation District sitting at the table, so we want
9 to be sure we preview it with them before it becomes
10 widely publicized.

11 I guess that's all I have on my list.

12 BOARD MEMBER BROWN: What about our next
13 meeting?

14 PRESIDENT CARTER: Mr. Punia is going to talk
15 about that.

16 EXECUTIVE OFFICER PUNIA: We'll discuss in a
17 minute.

18 PRESIDENT CARTER: Mr. Punia, go ahead.

19 EXECUTIVE OFFICER PUNIA: Jay Punia.

20 Based upon the Governor's Executive Officer
21 S-16-S-08, we have received a memorandum from the
22 Department of Personnel Administration. This memo
23 indicates that the DPA has developed a furlough plan
24 that will result in the closing of the general
25 government operation on the first and third Fridays of

1 each month, beginning this February and continuing end
2 of June 2010. So that definitely has a bearing on our
3 future meetings.

4 I had discussion with Board President Ben
5 Carter, and we have also checked availability of other
6 places where we can conduct the meetings because third
7 Fridays, the State will be -- the State employees will
8 be furloughed, and we have concluded that we cannot
9 have an effective meeting consequently.

10 So the proposal on the table at this time for
11 the Board's consideration is that we will move our
12 meetings to fourth Friday each month starting
13 March 2009.

14 For the February meeting, there is a conflict
15 because we have California Levees Roundtable meeting
16 already scheduled on the fourth Friday, 27th. Plus we
17 don't have an auditorium available on the fourth Friday
18 also.

19 So I'm proposing that the February meeting be
20 moved to the fourth Thursday, which is the 26th; and
21 from -- starting March, we move to the fourth Friday of
22 the month, if that's acceptable to the Board.

23 We won't be -- this auditorium is not
24 available; however, the old State Water Resources
25 Control Board hearing room is available for our

1 meetings.

2 BOARD MEMBER BROWN: In February?

3 EXECUTIVE OFFICER PUNIA: Starting March. For
4 February, we are still trying to find a suitable
5 location, and I'm hopeful we will be able to find a
6 suitable place.

7 SECRETARY DOHERTY: So from then on, all
8 meetings will be the fourth Thursday?

9 EXECUTIVE OFFICER PUNIA: Friday.

10 BOARD MEMBER BROWN: Starting March. That's a
11 good hearing room over there.

12 EXECUTIVE OFFICER PUNIA: Yes, I think so.

13 PRESIDENT CARTER: Assuming the furlough does
14 in fact happen. If the furlough doesn't happen, we'll
15 keep our existing schedule.

16 EXECUTIVE OFFICER PUNIA: That's correct. I'm
17 not canceling the reservation for this auditorium.
18 There is some likelihood the furlough may be canceled.
19 Then we will stick with our old schedule the third
20 Friday of each month.

21 But the schedule I'm proposing is subject to
22 the furloughs are implemented, then we will move to the
23 fourth Friday of each month starting March, and the
24 February meeting will be on the 26th, and the location
25 will be determined for the February meeting.

1 I hope that's acceptable to the Board Members,
2 then we will move ahead then to try to implement that
3 plan to accommodate the state employees' furloughs.

4 In addition to the state employees' furloughs,
5 there is a request from the Governor's office to reduce
6 your budget by ten percent. So we will continue to
7 adjust our budget so that we can show a ten percent
8 reduction in overall General Fund budget.

9 SECRETARY DOHERTY: We're just getting our
10 budget; now we have to give it back?

11 BOARD MEMBER RIE: Jay, if we do need to show
12 reduction in the budget, do we still have money for
13 everybody's salaries plus all the additional
14 subcommittees?

15 EXECUTIVE OFFICER PUNIA: We have to -- there
16 is no choice. The salaries will be reduced because of
17 these furloughs automatically ten percent.

18 This year, because of salary savings -- we
19 were given some money for hiring staff persons starting
20 July. But due to not able to go through the process,
21 we were not able to hire all the new staff. So this
22 year, I don't see any problem. But in the future
23 years, there will be problems.

24 BOARD MEMBER BROWN: What do you see if we
25 work less than sixty hours a month?

1 EXECUTIVE OFFICER PUNIA: Say it once again?

2 I couldn't follow your question.

3 BOARD MEMBER BROWN: Is there a change in
4 salary you anticipate from the \$53 or whatever it is an
5 hour if Board Members --

6 PRESIDENT CARTER: I thought you only got
7 twelve and a half.

8 BOARD MEMBER BROWN: Was there a change in the
9 twelve and a half dollars?

10 EXECUTIVE OFFICER PUNIA: I think we haven't
11 sorted out how this will be implemented on the Board
12 Members; but for the staff person, the expectation is
13 that they will get two days off, and their salary will
14 be reduced approximately ten percent.

15 BOARD MEMBER BROWN: Okay.

16 DEPUTY ATTORNEY GENERAL CAHILL: I think the
17 Board Member compensation is statutory.

18 BOARD MEMBER RIE: It doesn't apply to us.

19 DEPUTY ATTORNEY GENERAL CAHILL: I think so.

20 EXECUTIVE OFFICER PUNIA: We'll get more
21 guidance and keep you apprised. At this time, we don't
22 have a guidance on that Board Member salaries.

23 BOARD MEMBER BROWN: Sure.

24 EXECUTIVE OFFICER PUNIA: And as I'm sure all
25 of you are aware, that our counsel Ginny Cahill has

1 decided to retire by end of April. Is that true Ginny?

2 She is saying first, but I'm stretching it.

3 DEPUTY ATTORNEY GENERAL CAHILL: It was
4 beginning of April. I notice Jay is sort of moving it.
5 We'll see.

6 EXECUTIVE OFFICER PUNIA: Yeah.

7 So we have started our effort to find a
8 replacement for Ginny. The first option, we will
9 pursue with the Department of Justice that they
10 continue to provide services to us.

11 And I'm sure we'll be able to convince them,
12 but if we cannot, the second option is we will hire
13 independent legal counsel for the Board.

14 And third option is that we will go back to
15 the Department of Water Resources to provide legal
16 services.

17 BOARD MEMBER RIE: Didn't we determine that
18 was a conflict of interest, and we had to go outside of
19 department?

20 EXECUTIVE OFFICER PUNIA: If we hire a DWR
21 counsel. I think we may have to have some kind of
22 agreement with them that that person is working fully
23 for us. Still, it's some kind of a loan. We haven't
24 explored that in detail at this time.

25 PRESIDENT CARTER: That's kind of our last

1 choice.

2 And this is one thing I have neglected to
3 remember. In that meeting, I asked that we have a
4 Board Member participate in the search and selection
5 process. And I asked Emma if she was willing to do
6 that, and she volunteered to do that.

7 So she's going to be our point person in terms
8 of trying to fill Ginny's shoes.

9 BOARD MEMBER BROWN: Is that a full-time
10 position?

11 PRESIDENT CARTER: Which?

12 BOARD MEMBER BROWN: Ginny, you work -- do you
13 work full-time for our Board?

14 DEPUTY ATTORNEY GENERAL CAHILL: The position
15 was based on a two-thirds person. I think the money is
16 sufficient to support a complete staff counsel.

17 I personally am half-time, and then Debbie
18 Smith is working half time on litigation.

19 BOARD MEMBER BROWN: So if we go outside of
20 the system, it's going to be kind of hard to hire
21 someone half time; isn't it?

22 DEPUTY ATTORNEY GENERAL CAHILL: Oh, you'll
23 want someone full-time. You absolutely want someone
24 full-time.

25 EXECUTIVE OFFICER PUNIA: We have the funding,

1 but we don't have a position because our arrangement
2 with the Department of Justice was that we will provide
3 them the funding; they provide the position.

4 So we'll continue to work on this and try to
5 find a replacement before Ginny leaves.

6 PRESIDENT CARTER: And this -- given that
7 these things take a long time, it's important we move
8 quickly on this. And DWR, namely David Sandino and
9 Ward Tabor were planning on talking to -- what was the
10 woman's name in Berkeley?

11 DEPUTY ATTORNEY GENERAL CAHILL: Mary
12 Hackenbracht.

13 PRESIDENT CARTER: Mary Hackenbracht. Who is
14 responsible for the Attorney General's resources work,
15 as a first step, and we'll go from there.

16 EXECUTIVE OFFICER PUNIA: And I'm glad to
17 report that finally our Memorandum of Understanding
18 with DWR is fully executed, and we will be sending you
19 the hard copies.

20 SECRETARY DOHERTY: What is that?

21 EXECUTIVE OFFICER PUNIA: Our Memorandum of
22 Understanding. It took a while but finally it's all
23 signed and we have -- thanks, Ginny and Ben and Butch
24 worked hard on it.

25 I acknowledge that there are still problems

1 with Board Member salaries. I think there is a
2 confusion at the State Controller's office that how
3 they prorate the Board Members salary if the Board
4 Members work less than 60 hours.

5 So Lorraine and I will work with the State
6 Controller's office and our benefit -- payroll benefit
7 people to resolve this issue.

8 And I also acknowledge that there are some
9 issues with the W2s issued to the Board Members, so
10 we'll work with individual Board Members to resolve
11 those issues.

12 BOARD MEMBER RIE: Jay, real quick: Is it
13 standard to show the deductions for retirement on the
14 W2?

15 EXECUTIVE OFFICER PUNIA: When we get the --
16 as a state employee, when we get the W2s, shows the
17 deductions taken off.

18 BOARD MEMBER RIE: It shows the dollar amount
19 that's deducted?

20 EXECUTIVE OFFICER PUNIA: That's correct.

21 BOARD MEMBER RIE: I think mine said \$22 was
22 deducted, and it was more than that.

23 SECRETARY DOHERTY: I think I got mine
24 yesterday. I had over \$1,000 deducted.

25 BOARD MEMBER RIE: Mine was 22.

1 PRESIDENT CARTER: You got Teri's other
2 portion.

3 EXECUTIVE OFFICER PUNIA: If you have any
4 problem, let Lorraine know and we'll work to straighten
5 this out.

6 PRESIDENT CARTER: Bottom line, ladies and
7 gentlemen, is if you deviate from the personnel policy
8 or hours, you run the risk of running amok of having
9 people interpret what's going on out there. And more
10 often than not, they don't interpret it correctly.

11 So if you have got extra time, I'm sure staff
12 could use some help and you go ahead and fill your 60
13 hours. Get with Jay and Gary.

14 EXECUTIVE OFFICER PUNIA: And I think your
15 case is very unique, and payroll system is not designed
16 for such unique positions. So I think they are having
17 problems. Once we resolve this issue in the future, I
18 think it will go much smoother.

19 I think this morning, if you may be wondering,
20 that a DWR photographer was taking pictures. We are
21 planning to have an article in DWR magazine so the DWR
22 staff, the whole staff can acknowledge who we are and
23 what our new Memorandum of Understanding says about our
24 new relationship with the DWR. So we will have a nice
25 article in the next quarterly DWR magazine.

1 PRESIDENT CARTER: Nice to know we haven't
2 made an impression yet.

3 EXECUTIVE OFFICER PUNIA: This meeting, I'm
4 glad to inform that Jon Yego has picked up his new
5 environmental specialist and officered the job, and the
6 person has accepted the job. And Jon, tentative date
7 when he will start?

8 CHIEF YEGO: January 26th.

9 EXECUTIVE OFFICER PUNIA: January 26th.
10 I think those are my highlights. If you have
11 any questions, I will be glad to answer.

12 Thank you.

13 PRESIDENT CARTER: Any questions for Jay?
14 Okay. Let's knock out Future Agenda, take a quick
15 recess right after that and go into closed session.

16 So we didn't get a draft future agenda?

17 SECRETARY DOHERTY: We did. It should be in
18 the front of that side pocket, left side pocket.

19 PRESIDENT CARTER: Voilà.

20 BOARD MEMBER BROWN: February 26th now, one
21 change.

22 PRESIDENT CARTER: So we wanted to make sure
23 West Sac was on there. So Feasibility Cost Share
24 Agreement and Local Cost Share Agreement.

25 EXECUTIVE OFFICER PUNIA: Jill, you have a few

1 extra copies of the agenda?

2 PRESIDENT CARTER: We have the usual first six
3 items. And Three Rivers Levee Improvement Authority.

4 We have a number of consent items, A through
5 T, a lot of consent next month. No hearings.

6 West Sac Triangle Area Easement resolution.
7 Urban and nonurban levee evaluations.

8 EXECUTIVE OFFICER PUNIA: There were a couple
9 of requests from this morning. I'll discuss with
10 George Qualley and add accordingly those requested
11 under the informational briefing.

12 PRESIDENT CARTER: We have time to schedule
13 those, West Sac.

14 SECRETARY DOHERTY: I agreed not to hammer on
15 the Sutter Bypass, but we're supposed to have an update
16 in February. I want to make sure that gets on there
17 somewhere.

18 PRESIDENT CARTER: Update of?

19 SECRETARY DOHERTY: The staff progress on the
20 things we set out to do, various items we said, working
21 with landowners.

22 PRESIDENT CARTER: Update on the resolution.

23 BOARD MEMBER RIE: Is someone looking into the
24 legal issues of requiring Fish and Wildlife to get a
25 permit from our Board?

1 SECRETARY DOHERTY: Gary was going to check
2 with Fish and Wildlife, I believe, to see if perhaps
3 they would cost share on analysis. Did you follow up
4 on that?

5 CHIEF ENGINEER HESTER: I will. I have not
6 yet.

7 SECRETARY DOHERTY: All right.

8 DEPUTY ATTORNEY GENERAL CAHILL: There were
9 e-mails to the effect that under our regs we don't
10 require permits from Fish and Wildlife Service, but
11 they are nonetheless subject to the obligations of the
12 easements on their land.

13 So if at some point the Board directs that a
14 letter be prepared, that would be the basis on which we
15 would ask them to take actions to come in compliance
16 with those obligation.

17 BOARD MEMBER RIE: Should we talk about that
18 next month?

19 SECRETARY DOHERTY: Who got those e-mails?

20 PRESIDENT CARTER: We need to figure out what
21 the obligations are.

22 DEPUTY ATTORNEY GENERAL CAHILL: And I'm still
23 waiting to get from the Real Estate Branch the judgment
24 that relates to the time that the United States
25 condemned property to form the wildlife area. So I

1 haven't yet seen that judgment, but I have seen the
2 terms of other easements in that area.

3 PRESIDENT CARTER: And we had this lingering
4 issue of what flows ought to be out there and whether
5 or not the vegetation out there is impacting the flows
6 as a hydraulic effect, so we need to resolve that.

7 Anything else?

8 BOARD MEMBER RIE: Yes. Jim Sander is going
9 to retire, I believe, in March. And I don't know if we
10 have time in March before his retirement.

11 PRESIDENT CARTER: His last day is supposed to
12 be February 27th.

13 BOARD MEMBER RIE: All right. So next month
14 on the February agenda, I'd like to put on here a
15 resolution of appreciation for his retirement.

16 SECRETARY DOHERTY: I don't think anybody
17 should be allowed to retire. It just causes problems.

18 BOARD MEMBER RIE: And I would be happy to
19 write that resolution, get my 60 hours in.

20 PRESIDENT CARTER: I'm sure staff would be
21 delighted to let you do that.

22 EXECUTIVE OFFICER PUNIA: We'll work with you.

23 BOARD MEMBER RIE: Okay.

24 PRESIDENT CARTER: Great. Thank you. That's
25 well-deserved. Anything else?

1 BOARD MEMBER SUAREZ: Mr. President, not
2 necessarily for February, but at some point I'd like to
3 get an update from Kasey Schimke of what's going on in
4 the Capitol building in terms of legislation.

5 SECRETARY DOHERTY: On what?

6 BOARD MEMBER SUAREZ: On legislation. But I
7 know February looks already pretty crowded so maybe
8 for March.

9 DEPUTY ATTORNEY GENERAL CAHILL: And I think
10 you wanted to add the closed session with regard to the
11 Cache Creek setback levee.

12 BOARD MEMBER RIE: Thank you for that
13 reminder. Do we know who our ex officio member is from
14 the Senate?

15 EXECUTIVE OFFICER PUNIA: No, just from the
16 assembly I'm aware of.

17 PRESIDENT CARTER: Don't know who that is yet.

18 BOARD MEMBER RIE: Okay.

19 EXECUTIVE OFFICER PUNIA: I want to make sure.
20 Your request is to get Kasey Schimke to give update on
21 legislation?

22 BOARD MEMBER SUAREZ: Anything that might be
23 of interest to this Board.

24 PRESIDENT CARTER: Anything else? Okay.

25 We'll try and calendar all of that.

1 And so let's take a -- can we take just a
2 five-minute stretch, and we'll clear the auditorium and
3 go into closed session.

4 * * *

5 (Thereupon the CENTRAL VALLEY FLOOD
6 PROTECTION BOARD meeting adjourned to
Closed Session at 4:30 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, LINDA KAY RIGEL, a Certified Shorthand
3 Reporter of the State of California, do hereby certify:

4 That I am a disinterested person herein; that
5 the foregoing CENTRAL VALLEY FLOOD PROTECTION BOARD
6 meeting was reported in shorthand by me, Linda Kay
7 Rigel, a Certified Shorthand Reporter of the State of
8 California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in
12 any way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my
14 hand this January 30, 2009.

15

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19 LINDA KAY RIGEL, CSR
20 Certified Shorthand Reporter
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